

No.

2842

4

United States
Circuit Court of Appeals
For the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

vs.

HARRY CANNON AND WALTER D.
STOREY,

Respondents.

Transcript of Record

Upon Appeal from the United States District
Court for the District of Montana

Filed

NOV 12 1978

F. D. Monkton,
clerk.

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Circuit Court of Appeals
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Names and Addresses of the Solicitors of Record:

Hon. T. W. GREGORY, Attorney General of the
United States, of Washington, D. C.

Hon. BURTON K. WHEELER, United States At-
torney for the District of Montana, of Butte,
Montana.

Solicitors for Plaintiff and Appellant.

Hon. C. L. HARRIS, of Billings, Montana,

Hon. W. M. JOHNSTON, of Billings, Montana,

Hon. H. J. COLEMAN, of Billings, Montana,

Solicitors for Defendants and Appellees.

*In the District Court of the United States, in and for the
District of Montana.*

IN EQUITY—No. 53.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARRY CANNON AND WALTER D.
STOREY,

Defendants.

BE IT REMEMBERED that on April 16, 1915,
plaintiff filed its Bill of Complaint herein in the words
and figures following, to-wit:—

United States of America vs.

*In the District Court of the United States, District of
Montana.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARRY CANNON AND WALTER D.
STOREY,

Defendants.

BILL OF COMPLAINT.

To the Honorable District Court of the United States,
in and for the District of Montana:

The United States of America by the Attorney General of the United States and Burton K. Wheeler, United States Attorney for the district of Montana, brings this bill of complaint against Harry Cannon, a resident of the state and district of Colorado, and Walter D. Storey, a resident of the state and district of Montana, defendants herein, and thereupon your orator complains and says:

I.

That on and prior to the 1st day of May, 1909, your orator was the owner in fee of those certain public lands situate in the state and district of Montana and within the Billings land district, and more particularly described as follows, to-wit: The west half of the northwest quarter (W/2 NW^{1/4}), the northeast quarter of the northwest quarter (NE^{1/4} NW^{1/4}) and the northwest quarter of the northeast quarter (NW^{1/4} NE^{1/4}) of section twenty-four (24), township two (2)

south, range twenty-two (22) east of Montana principal meridian, containing one hundred sixty (160) acres of land, situate, lying and being in the county of Stillwater, in the state and district of Montana, and within the jurisdiction of this court.

II.

That one Harry Cannon on the said 1st day of May, 1909, under and by virtue of the provisions of section 2289 Revised Statutes of the United States, made and filed in the local land office of the United States at Billings, in the state and district of Montana, his written application and affidavit No. 02429, under oath, to enter as a homestead the lands hereinbefore described, which said application and affidavit was, on the said 1st day of May, 1909, and before the filing of the same in said land office, signed, subscribed and sworn to by the said Harry Cannon before W. M. Enright, the Receiver of said United States land office at Billings, Montana.

III.

That the said Harry Cannon in his said application and affidavit No. 02429, so made, signed, subscribed and sworn to as aforesaid, among other matters and things, stated and deposed that his said application to enter said lands as a homestead was honestly and in good faith made for the purpose of actual settlement upon and cultivation of said lands; that he would faithfully and honestly endeavor to comply with all of the requirements of law as to settlement, residence and cultivation necessary to acquire title to said lands, and

that he did not apply to enter the same for speculation but in good faith to obtain a home for himself; that thereupon the said Harry Cannon then and there paid the Receiver of said local land office of the United States at Billings, Montana, the sum of twenty-two dollars, the same being the proper and legal fee then and there due and payable to said Receiver upon the filing of said application and affidavit aforesaid, and the said Register and Receiver of said United States land office, relying upon and believing the statements of the said Harry Cannon contained in said homestead application and affidavit to be true, received, accepted and filed the said homestead application and affidavit of the said Harry Cannon, and received and accepted the said fee for the filing of said application and affidavit; and that thereafter and on the 1st day of May, 1909, and upon such payment having been made as aforesaid, a receipt was then and there issued and delivered by the said Receiver of the said Billings land office to the said Harry Cannon for said amount of money so paid by him as aforesaid.

IV.

And your orator further sheweth unto your Honor that the said acceptance of the said homestead application and affidavit of the said Harry Cannon by the said Register and Receiver as aforesaid, and the acceptance and receipt by said Receiver of said fee for the filing of said homestead application and affidavit as aforesaid, and the issuance of said receipt therefor by said Receiver as aforesaid, were had and done by

the officers of said land office in reliance by them, and each of them, upon the truth of the statements set forth and contained in the aforesaid homestead application and affidavit of the said Harry Cannon, and in reliance by them, and each of them, upon the good faith of the said Harry Cannon in the premises, and not otherwise.

V.

That said homestead application and affidavit of the said Harry Cannon was then and there false, fraudulent and untrue in this, to-wit: that said application to enter said lands as a homestead was not honestly and in good faith made for the purpose of actual settlement and residence upon and cultivation of said lands by the said Harry Cannon, and that said Harry Cannon did not intend, at the time of making and filing said homestead application and affidavit, to comply with all of the requirements of law as to settlement, residence and cultivation necessary to acquire title to said lands, and that the said Harry Cannon did not apply to enter said lands in good faith to obtain a home for himself, but that said application to enter said lands was made by the said Harry Cannon with the intent of fraudulently acquiring title to said lands under the homestead laws of the United States without either settlement or residence upon or cultivation thereof by the said Harry Cannon, for the purpose of obtaining a home for himself, and that the statements contained in said homestead application and affidavit of the said Harry Cannon were false, fraudulent and untrue as hereinbefore set forth, and the same were made and filed for the false and

speculation and not for the purpose of

fraudulent purpose of imposing upon and deceiving the Register and Receiver of the said United States land office at Billings, Montana, and to cause and induce the officers of your orator to believe the statements contained in said affidavit were true, and that the said defendant, Harry Cannon, was making said homestead application and entry in good faith for the purpose of actual settlement and residence upon and cultivation of said lands and in good faith to obtain a home for himself and not for speculation, and for the false and fraudulent purpose of inducing said officers, by means of the fraud and deceit hereinbefore specifically set forth, to accept said homestead application and entry and file the same.

VI.

That thereupon, in order to entitle the said Harry Cannon to obtain and procure from the said United States a patent for said tract of land under the homestead laws of the United States, it was incumbent upon him, and he was required, to make actual settlement upon said lands and reside thereon and cultivate the same for a period of five years from and after the time of the filing in said local land office at Billings, Montana, of his application and affidavit hereinbefore set forth, or in case he did not desire to remain upon said lands the full period of five years, to make payment for said lands at any time after the expiration of fourteen calendar months from and after the filing of said application and affidavit as aforesaid at the rate of one dollar and twenty-five cents per acre and make proper

and satisfactory proof before the Register and Receiver of the said local land office of the United States at Billings, Montana, of settlement and residence upon and cultivation of said lands by the said Harry Cannon from the date of the filing of said application and affidavit down to the time of making of such proof and payment; that for the purpose of availing himself of the privileges afforded by section 2301 of the Revised Statutes of the United States and the acts amendatory thereof and supplemental thereto and after the expiration of fourteen calendar months from and after the filing by him of said application and affidavit, on or about the 1st day of May, 1909, as aforesaid, the said Harry Cannon on the 24th day of January, 1911, appeared with his final proof witnesses, Albert E. Buster and Chester A. Roberts, before W. M. Enright, Receiver of the United States land office at Billings, Montana, said land office then and there being the proper United States land office of the land district wherein said lands were situated, and offered proof before the said W. M. Enright, Receiver of said United States land as aforesaid, that he had settled upon said lands and premises and actually resided thereon and cultivated the same as required by law and within the meaning and intent of the said homestead laws of the United States, and then and there gave, made out and signed his deposition and affidavit and swore to the same before the said W. M. Enright, Receiver of said United States land office as aforesaid, and the said Harry Cannon on or about the 24th day of January,

1911, filed and caused to be filed said affidavit, deposition and sworn statement so made, signed and sworn to by the said Harry Cannon, to and with the Register and Receiver of the United States land office as proof of the settlement and residence upon and the cultivation of the said lands and premises by the said Harry Cannon as required by law and the statutes in such case made and provided, and the same were accepted by the said Register and Receiver of said land office.

VII.

And your orator sheweth unto your Honor that the said said Harry Cannon in said affidavit, deposition and sworn statement so made, signed and sworn to by him as aforesaid, and offered, presented, delivered and filed with the said Register and Receiver and accepted by them as proof of the settlement and residence of the said Harry Cannon upon the said lands and the cultivation of the same by the said Harry Cannon, among other matters and things, testified and deposed that he had established his actual residence upon said lands during the month of May, 1909, and had resided on said lands continuously since the month of May, 1909, and that the said Harry Cannon had never been absent from said lands since the said Harry Cannon had established his residence thereon in the month of May, 1909, except for a period of two (2) weeks in December, 1910; and that he had placed improvements on said lands consisting of a log house, barn, ~~cattle~~ ^{corrals} and fencing and had cultivated between ten and twelve acres of said lands;

and the said Harry Cannon procured from each of his said final proof witnesses, Albert E. Buster and Chester A. Roberts, affidavits and depositions and sworn statements taken before the said W. M. Enright, Receiver of said land office as aforesaid, made, signed and sworn to by the said final proof witnesses before the said Receiver as aforesaid, to the same effect and corroborative and in aid of the said affidavit, deposition and sworn statement, made, signed and sworn to by the said Harry Cannon and filed the same, together with the said Harry Cannon's own affidavit, deposition and sworn statement, in the local land office of the United States at Billings, Montana, and offered, presented and delivered the same to the said Register and Receiver of said land office, together with his own affidavit, deposition and sworn statement, as proof of the settlement and residence upon and cultivation of said lands by the said Harry Cannon as required by law, and all of the said affidavits, depositions and sworn statements of the said Harry Cannon, and his said final proof witnesses, so made, signed and sworn to as aforesaid, and offered, presented and delivered to the said Register and Receiver of said land office as aforesaid, were, and each of them was, then and there taken and accepted by the said Register and Receiver of said land office as proof of the settlement and residence of the said Harry Cannon upon said lands and premises, and the cultivation thereof by the said Harry Cannon.

VIII.

That on the 24th day of January, 1911, on the pres-

entation and delivery to the Register and Receiver of the said land office by the said Harry Cannon of his said affidavit, deposition and sworn statement, and the affidavits, depositions and sworn statements of his said final proof witnesses, and after the acceptance thereof by the said Register and Receiver of the said land office as aforesaid, the said Register of the said land office at Billings, Montana, then and there issued to the said Harry Cannon his certificate for said lands, certifying that in pursuance of law the said Harry Cannon had made payment in full for said lands, and upon presentation of said certificate to the Commissioner of the General Land Office, said Harry Cannon should be entitled to receive a patent for said lands hereinbefore more particularly mentioned and described; and that thereafter such proceedings were had that on the 26th day of June, 1911, a patent was issued by the United States to the said Harry Cannon for said lands, which patent was duly delivered to the said Harry Cannon and received by him.

IX.

And your orator further showeth unto your Honor that the said acceptance of the said affidavits, depositions and testimony of the said Harry Cannon and of his said final proof witnesses, Albert E. Buster and Chester A. Roberts, as proof of the settlement and residence of the said Harry Cannon upon said lands and the cultivation of the same by him as required by law, by the said Register and Receiver, and the issuance of the said certificate of purchase by the said Register as

hereinbefore mentioned and set forth, and the issuance of the said patent for said tract of land by the United States, were had and done by the officers of the said land office and the officers of the United States in reliance by them, and each of them, upon the truth of the testimony and statements contained in the affidavits and depositions of the said Harry Cannon and in reliance by them, and each of them, upon the truth of the testimony and statements contained in the affidavits and depositions of the said final proof witnesses, and in reliance upon the good faith of the said Harry Cannon and his said final proof witnesses in the premises, and not otherwise.

X.

That the said affidavit and deposition of the said Harry Cannon and the said affidavits and depositions of the said final proof witnesses, Albert E. Buster and Chester A. Roberts, were, and each of them, was, then and there false, fraudulent and untrue, as was then and there well known to the said Harry Cannon and to each of his said final proof witnesses, and was made with intent to deceive the officers of the United States and with intent to fraudulently obtain patent to said lands hereinbefore described, and by fraud and deceit to procure a patent for said lands and premises by means of the false and fraudulent testimony and statements made and contained in the said affidavits, depositions and testimony in this, to-wit: that the said Harry Cannon had not and did not establish his residence upon said lands, or any portion thereof, during the

month of May, 1909, or at any other time, or at all; that the said Harry Cannon had not at the time of making his said final proof and the filing of the same in the said land office, resided on said lands or any part or portion thereof continuously, or in any other manner or at all, since the month of May, 1909, or at any other time; that the said Harry Cannon had not made at the time of making his said final proof and the filing of the same in said land office, or at any other time, or at all, any improvements of any kind whatever upon said lands, or upon any part thereof, and had not cultivated between ten and twelve acres of said lands or any part or portion thereof whatever; and your orator alleges the fact to be that the said Harry Cannon never did make settlement upon said lands, or on any part or portion thereof; and never did establish his actual residence upon said lands, or upon any part or portion thereof; and never did reside upon said lands continuously, or in any other manner or at all, at any time, and never did have at any time or at all a house, barn, corrals, fencing, or any other buildings or improvements of any kind whatever upon said lands, or upon any part or portion thereof, and never did cultivate any part or portion of said lands whatever; and that each and every of the statements so made by the said Harry Cannon and his said final proof witnesses, as hereinbefore mentioned and set forth and which are contained in the said affidavits, depositions and testimony to prove the settlement and residence by the said Harry Cannon upon said lands and improvements and

cultivation thereof required by the homestead laws of the United States, were utterly false, fraudulent and untrue in every particular, as he, the said Harry Cannon then and there well knew.

XI.

And your orator further sheweth unto your Honor that the said Harry Cannon, by means of said false and fraudulent depositions and the false and fraudulent statements and testimony therein contained, given under the sanction and oath of the said Harry Cannon and his final proof witnesses, imposed upon and deceived the said officers and agents of the United States and caused and induced the said officers to believe that the testimony and statements contained in said depositions were true and that the said Harry Cannon had actually settled and resided upon said lands and improved and cultivated the same in the manner and to the extent as stated in said depositions, and that the said officers of the United States, supposing and believing the said testimony and statements contained in said depositions of the said Harry Cannon and his final proof witnesses to be true, and relying upon the truth of the said testimony and statements so falsely and fraudulently given and made by the said Harry Cannon and his final proof witnesses as aforesaid, and believing and supposing on the strength of said depositions and testimony that the said Harry Cannon had actually made settlement and resided upon said lands and made improvements thereon and cultivated the same in the manner and for and during the

period of time as therein stated by him, the said Harry Cannon and his final proof witnesses, were wholly deceived and misled into allowing said final proof to be filed and accepted and in permitting the issuance of said certificate of purchase of said lands and the United States patent therefor by the said officers of the United States, as hereinbefore set forth, and delivering the said patent to the said Harry Cannon.

XII.

And your orator further sheweth unto your Honor that since the issuance of said certificate and patent for said lands to the said Harry Cannon as aforesaid, the said Harry Cannon has heretofore, to-wit: on the 5th day of August, 1912, conveyed and deeded the said lands to the said Walter D. Storey, and that the said Walter D. Storey is now in occupancy, possession and enjoyment of the said lands and premises, but your orator alleges that by whatever pretended right or title the said Walter D. Storey now holds possession of or occupies said lands, the same is wholly void and ineffectual as against the rights of your orator; that the existence of said patent so fraudulently obtained and procured by the said Harry Cannon as hereinbefore set forth on its face entitled the said Harry Cannon and those claiming under him to exercise the right of absolute ownership on and over the said lands and assert a legal title to the same, to which the defendants are not entitled; that if the said patent remains uncancelled and in force, the same may be used in fraud of your orator and all persons relying thereon

as a valid and substantial conveyance of the legal title to said lands and premises.

XIII.

And your orator further avers and charges that the said Walter D. Storey was not a purchaser in good faith and for a valid consideration of the lands hereinbefore described, but if he purchased the same at all purchased the same with full and complete notice and knowledge that said lands were entered in fraud and that patent thereto was fraudulently obtained by the said defendant Harry Cannon and in violation of the laws of the United States and against the legal and equitable rights of the plaintiff, and that said pretended purchase is void and should be so decreed in equity in favor of this plaintiff and against the said Walter D. Storey.

All of which actions, doings and pretenses of the defendants are contrary to equity and good conscience and done to the manifest injury and oppression of the plaintiff in the premises.

IN CONSIDERATION WHEREOF, and for as much as the plaintiff is remediless in the premises at and by the strict rules of the common law, and is relievable only in a court of equity, where matters of this nature are properly cognizable and relievable; and

TO THE END, THEREFORE, that the said defendants, Harry Cannon and Walter D. Storey, make full, true, direct and perfect answer make to all and singular the matters hereinbefore stated and charged, but not under (an answer under oath be-

ing hereby expressly waived), as fully and particularly as if the same were hereinafter repeated and they thereunto distinctly interrogated; and to the end that the said defendants and all and singular their agents, employees and servants may be forthwith and forever restrained and enjoined from setting up and asserting or claiming any rights, privileges, benefits or advantages under and by reason of said patent, or said pretended deed of conveyance hereinbefore mentioned; and to the end that said patent so issued by the plaintiff to the said Harry Cannon may be declared void and cancelled; and that the said pretended deed of conveyance from the said Harry Cannon to the said Walter D. Storey may be by decree of this Honorable Court treated as a cloud upon the title of the plaintiff to all and singular the lands in paragraph one herein described, and the same removed as such; and that the legal and equitable title and the right of possession thereof in and to the lands hereinbefore and in this bill of complaint described, be restored and given to the plaintiff, and that the plaintiff have such other and further relief in the premises as the circumstances of this cause may require and as to this Honorable Court may seem meet and proper, and as is agreeable to equity and good conscience.

MAY IT PLEASE YOUR HONOR to grant unto the plaintiff a writ of subpoena to be directed to the said Harry Cannon and Walter D. Storey, thereby commanding them and each of them at a certain and place and under a certain penalty therein to be speci-

fied, personally to be and appear before this Honorable Court, and then and there to answer all and singular the premises, and to stand to and abide by such further order, direction or decree therein as to this Honorable Court may seem meet.

T. W. GREGORY,
Attorney General.

B. K. WHEELER,
United States Attorney,
District of Montana.

UNITED STATES OF AMERICA,
District of Montana—ss.

BURTON K. WHEELER, being first duly sworn, deposes and says that he is the duly and regularly appointed, qualified and acting United States Attorney for the district of Montana; that he has read the foregoing bill of complaint and knows the contents thereof, and that the matters and facts therein stated are true to the best of his knowledge, information and belief.

BURTON K. WHEELER.

Subscribed and sworn to before me this 16th day of April, 1915.

GEO. W. SPROULE,
Clerk U. S. Dist. Court.

(SEAL)

By HARRY H. WALKER,
Deputy.

(Indorsed): Title of Court and Cause. Bill of Complaint. Filed April 16, 1915, Geo. W. Sproule, Clerk. By Harry H. Walker, Deputy Clerk.

Thereafter, on the same day, a subpoena in equity was duly issued herein in the words and figures following, to-wit:

UNITED STATES OF AMERICA.

District Court of the United States, District of Montana.

IN EQUITY.

The President of the United States of America, Greeting: To Harry Cannon and Walter D. Storey, Defendants.

You are hereby commanded that you be and appear in said District Court of the United States aforesaid, at the Court Room in Federal Building, Helena, Montana, on the 6th day of May, 1915, to answer a Bill of Complaint exhibited against you in said Court by United States of America, Complainant, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under penalty of Five Thousand Dollars.

Witness the Honorable Geo. M. Bourquin, Judge of the District Court of the United States for the District of Montana, this 16th day of April, in the year of

our Lord one thousand nine hundred and fifteen, and
of our Independence the 139.

GEO. W. SPROULE,

Clerk.

By HARRY H. WALKER,

(SEAL)

Deputy Clerk.

MEMORANDUM PURSUANT TO RULE 12,
SUPREME COURT U. S.

You are hereby required to file your answer or other defense in the Clerk's office of said court on or before the twentieth day after service, excluding the day thereof; otherwise the bill may be taken pro confesso.

GEO. W. SPROULE,

Clerk.

By HARRY H. WALKER,

Deputy Clerk.

T. W. GREGORY, U. S. Atty. Gen.,

B. K. WHEELER, U. S. Atty.,

Solicitors for Complainant, Butte, Montana.

UNITED STATES MARSHAL'S OFFICE, DIS-
TRICT OF MONTANA.

I hereby certify that I received the within writ on the 26th day of April, 1915, and personally served the same on the 27th day of April, 1915, by delivering to and leaving with Walter D. Storey, whose true name is Walter D. Storey, at his ranch 2 miles West of Park City, said defendant named therein personally at place

above stated in the county of Stillwater, in said district, a copy thereof, with a copy of the complaint attached.

WILLIAM LINDSAY,

U. S. Marshal.

By THAD C. POUND,

Deputy.

HELENA, April 30, 1915.

After diligent search and inquiry the therein named Harry Cannon could not be found in the District of Montana.

(Indorsed.) Title of Court and Cause. Subpeona. Filed April 30th, 1915, Geo. W. Sproule, Clerk, by C. R. Garlow, Deputy Clerk.

Thereafter and on May 3rd, 1915, the defendants filed their answer herein, as follows, to-wit:

ANSWER.

In the District Court of the United States, District of Montana.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARRY CANNON and WALTER D.
STOREY,

Defendants.

To the Honorable District Court of the United States, in and for the District of Montana:

Comes now, Harry Cannon and Walter D. Storey, and makes and files their answer to the bill of com-

plaint of plaintiff filed herein and admits, denies and alleges as follows:

1.

Admits the matter alleged in paragraph one of plaintiff's bill of complaint contained.

2.

Admits the matters alleged in paragraph two of plaintiff's bill of complaint contained.

3.

Admits the allegations alleged in paragraph three of plaintiff's bill of complaint contained, except that the defendants deny that Harry Cannon, among other things in said application contained, stated that he would "faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence and cultivation necessary to acquire title to said

4.

Admits the matters alleged in paragraph four of plaintiff's bill of complaint contained.

5.

Answering paragraph five of plaintiff's bill of complaint, the defendants deny each and every statement, allegation and thing contained and the whole thereof.

6.

Admits the matters and statements alleged in paragraph six of plaintiff's bill of complaint contained.
lands."

7.

Admits the matters and allegations in paragraph seven of plaintiff's bill of complaint contained.

8.

Admits the matters and allegations in paragraph eight as alleged in plaintiff's bill of complaint contained.

9.

Admits the matters and allegations in paragraph nine of plaintiff's bill of complaint contained.

10.

Denies each and every statement, matter and thing in paragraph ten of plaintiff's bill of complaint contained; and avers that Harry Cannon fully complied with the law and regulations in regard to his entry, both as to residence, cultivation, improvements and payment of money; that each and all and every one of the statements made to departments through the United States District Land Office, Billings, Montana, with reference to his entry was and is the truth; denies each and every allegation, matter and thing stated and alleged in paragraph ten of plaintiff's bill of complaint contained.

11.

Answering paragraph eleven, the defendants admit that the Register and Receiver of the United States Land Office at Billings, Montana, relied upon and believed statements made by Harry Cannon, as his witnesses concerning final proof referred to in plaintiff's bill of complaint; and denies that such statements were false and defendants re-asserts, re-affirms and re-alleges such statements to be true, otherwise defend-

ants deny each and every allegation, matter and thing in said paragraph contained.

12.

Answering paragraph twelve of plaintiff's bill of complaint, the defendants admit the transfer referred to thereof, to Walter D. Storey, on April 5th, 1912, and that he is the present owner of said land, and is in the occupancy and possession thereof; denies that the patent was obtained by fraud and denies that plaintiff was prejudiced or injured by such transfer.

13.

Answering paragraph thirteen of plaintiff's bill of complaint, the defendants deny that Walter D. Storey was not a purchaser in good faith for valuable consideration, and avers that Walter D. Storey purchased such land about a year after the final proof was accepted and payment thereof made, and avers that such purchase was made in good faith for a valuable consideration to-wit: the sum of One Thousand (\$1000.00) Dollars, in lawful money of the United States of America, in hand paid to Harry Cannon; denies that said land was purchased from said Harry Cannon with full and complete notice, or with any notice, knowledge or information whatever that said land was entered in fraud and that patent thereto was fraudulently obtained by said defendant, Harry Cannon, and in violation of the laws of the United States, and against the legal and equitable rights of the plaintiff; and denies that such land was so obtained, de-

nies that said pretended purchase is void; denies that equity should decree said transfer or purchase to be void, and in favor of the plaintiff, and against the said Walter D. Storey. Walter D. Storey, defendants, alleges and avers that said transfer was made in good faith for valuable consideration, and without any knowledge on his part either directly or indirectly—that such land was fraudulently obtained; or that said Harry Cannon or any of his witnesses have testified falsely with reference to said entry or the final proof thereof, or had made any false or fraudulent statements or representations concerning the same, either to the Register or Receiver of the United States Land Office or any other official of the Department of the Interior; avers that all of his actions and conduct with reference to the purchase or transfer of said property was bona-fide and in conformity to equity and good conscience. Walter D. Storey avers that he had no knowledge or information that the plaintiff herein was being deceived or oppressed or injured by any of the transactions of Harry Cannon with reference to his said entry.

Except as herein expressly denied or expressed, the defendants deny each and every allegation, matter and thing contained in plaintiff's bill of complaint filed herein.

These defendants hereby reserving all manners of exceptions that may be had to the uncertainties and imperfections of plaintiff's bill of complaint.

Having thus made full answer to all the matters and things contained in said bill of complaint, the defen-

dants pray to be dismissed hence with costs in their behalf incurred.

C. L. HARRIS,
Attorney for Defendants.

State of Montana,
County of Yellowstone,—ss.

Personally appeared before me the undersigned, Walter S. Storey, one of the defendants in the above cause, who being duly sworn, says that he is one of the defendants in the above entitled cause and that the matters and things contained in said answer are true.

WALTER D. STOREY.

Subscribed and sworn to before me this 1st day of May, 1915.

C. L. HARRIS,
Notary Public for the State of Montana, Residing at Billings, Montana.

My commission expires June 5th, 1915.

(Notary Seal)

Service of within and foregoing answer admitted and receipt of copy thereof acknowledged this _____ day of May, 1915.

Attorney for Plaintiff.

(Indorsed): Filed May 3rd, 1915. Geo. W. Sproule Clerk, by C. R. Garlow, Deputy.

Thereafter, on January 26th, 1916, decree was filed and entered herein in the words and figures following, to-wit:

*In the District Court of the United States, in and for the
District of Montana, Billings Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARRY CANNON and WALTER D.
STOREY,

Defendants.

JUDGMENT.

This cause came on for trial at Billings, Montana, December 24th, 1915, to the court sitting without a jury. Plaintiff was represented by B. K. Wheeler, United States District Attorney, and Frank Woody, Assistant United States Attorney for the District of Montana. The defendants were present in person and by their counsel, C. L. Harris and Johnston & Coleman. Witnesses on behalf of both plaintiff and defendants were sworn and examined and the matter submitted to the court for its consideration. Thereafter and on January 22nd, 1916, the court made and filed its findings of fact and conclusions of law, which, omitting title of court and cause, are as follows, to-wit:

"Herein the court finds that the allegations of fraud in the complaint and any of them are not proven; that the allegations of the answer by way of new matter in

defense are proven and therefore the court concludes plaintiff is not entitled to recover herein. Decree accordingly."

Wherefore, by reason of the law and the premises aforesaid, it is ordered, adjudged and decreed that the plaintiff take nothing by this action; that the defendant, Harry Cannon, did not practice fraud in securing patent to the lands embraced in his homestead entry, to-wit: The west half of the northwest quarter, the northeast quarter of the northwest quarter and the northwest quarter of the northeast quarter of section twenty-four in township two south of range twenty-two east of the Montana Meridian in Montana; and that the title of the defendant, Walter D. Storey, in and to said lands is good as against the United States of America.

Done in open court at Helena, Montana, January 26, 1916.

BOURQUIN,
Judge.

(Indorsed): Filed and entered January 26th, 1916.
Geo. W. Sproule, Clerk, by C. R. Garlow, Deputy.

WHEREFORE, said pleadings, process and final decree are entered of final record herein in accordance with the law and the practice of this court.

Witness my hand and the seal of said court at Helena, Montana, this 26th day of January, 1916.

GEO. W. SPROULE, Clerk.
By C. R. GARLOW, Deputy.

(Indorsed): Title of Court and Cause. Final Record. Filed and entered Jan. 26th, 1916. Geo. W. Sproule, Clerk. By C. R. Garlow, Deputy Clerk.

Thereafter, on January 22nd, 1916, the Court's decision was duly rendered and filed herein, in the words and figures following, to-wit:

In the District Court of the United States, District of Montana.

UNITED STATES OF AMERICA,

vs.

HARRY CANNON, et al.

Herein the court finds that the allegations of fraud in the complaint and any of them are not proven; that the allegations of the answer by way of new matter in defense are proven. And therefore ~~the~~ the court concludes plaintiff is not entitled to recover herein. Decree accordingly.

MEMO.

The homestead law requires residence, improvements and cultivation. Continuous residence, which does not import continuous presence, is required upon the land. No particular amount of improvements and cultivation is specified by law. Enough to indicate the good faith of the entryman, in view of all attendant circumstances, satisfies the law. To overthrow a patent, requires clear and convincing proof of fraud. Suspicious circum-

stances do not meet this requirement. In this case no more than suspicious circumstances appear, in the main as consistent with absence of as with fraud.

In view of Cannon's occupation, that chance passers saw him not nor evidences of occupancy, is not inconsistent with his continuous residence though not continuous presence, upon the land. The only witness that looked into the cabin, saw evidences of inhabitancy. The others, doubtless, were not severely scrutinizing the place nor interested in remembering. Improvements and cultivation show good faith. The fact that Cannon added improvements after final proof, lived there more than a year after proof, and did not sell till 16 months after proof, all are in favor of good faith. Story paid full value for the land and had no reason to believe Cannon had not fully complied with the homestead law, even if Cannon had not. Story is an innocent or *bona fide* purchaser defeating any cancellation of the patent if fraudulently secured by Cannon.

BOURQUIN, J.

(Indorsed): Filed Jan. 22, 1916. Geo. W. Sproule,
Clerk. By Harry H. Walker, Deputy.

Thereafter on June 20th, 1916, notice of motion to approve statement of evidence on appeal was duly filed herein as follows, to-wit:

In the District Court of the United States, District of Montana.

UNITED STATES OF AMERICA,

Complainant,

vs.

HARRY CANNON and WALTER D.
STOREY,

Defendants.

**NOTICE OF MOTION TO APPROVE STATEMENT OF
EVIDENCE ON APPEAL.**

To C. L. Harris and W. M. Johnston, Attorneys for Harry Cannon and Walter D. Storey, the above named defendants:

YOU WILL PLEASE TAKE NOTICE that the undersigned, solicitor for the complainant and appellant herein, has this day lodged with the Clerk of the aforesaid court complainant's statement or proposed record of the evidence on appeal herein, and that at the City of Helena, in the State and District of Montana, on the 6th day of July, 1916, at the hour of 10 o'clock A. M., or as soon thereafter as counsel can be heard, the undersigned will ask the Court or Judge to approve the aforesaid statement of the evidence on appeal herein.

Dated this 16th day of June, 1916.

B. K. WHEELER,
United States Attorney, Solicitor for Complainant.

Due service of the foregoing notice is hereby admitted this 17th day of June, 1916.

C. L. HARRIS,
H. J. COLEMAN,
W. M. JOHNSTON,
Solicitors for Defendants.

(Indosed): Title of Court and Cause. Notice of Motion to Approve Statement of Evidence. Filed June 20, 1916. Geo. W. Sproule, Clerk.

Thereafter, on July 10th, 1916, a statement of the evidence on appeal was duly approved and filed herein in the words and figures following, to-wit:

District Court of the United States, District of Montana.

UNITED STATES OF AMERICA,

Complainant,

vs.

HARRY CANNON and WALTER D.
STOREY,

Defendants.

STATEMENT OF THE EVIDENCE.

BE IT REMEMBERED that the above entitled action came regularly on for trial before the above entitled court, on the 23rd day of December, 1915, the plaintiff being represented by B. K. Wheeler, United

States Attorney, and Frank Woody, Assistant United States Attorney, and the defendants by C. L. Harris, Esq., and W. M. Johnston, Esq.

And that thereupon the following proceedings were had and the following testimony was given by the respective witnesses, to-wit:

GUS IMHOFF, being first duly sworn as a witness for and on behalf of the complainant, testified as follows:

Direct Examination.

(By MR. WOODY.)

I reside at Park City and have resided there fifteen years. I am acquainted with the defendant Harry Cannon and have known him six or seven years. I am acquainted with Walter D. Storey and have known him for twelve or fifteen years. I know where the tract of land is situated on which Harry Cannon filed a homestead entry and afterwards obtained patent to. I know where Walter D. Storey's home is. It is about a mile, maybe a mile and a half from the land on which Mr. Cannon filed. Between May 1st, 1909, and January 24th, 1911, I was in the employ of Mr. Storey. I was in his employ from some time in the spring until in June sometime, I cannot tell the date, probably the 10th of June, 1909. I commenced working for Mr. Storey in October, 1908, and worked for him until some time in June, 1909. During the spring of 1909 I was taking care of sheep for Mr. Storey, herding sheep, about six hundred. I had a sheep camp north

of Mr. Storey's land, and south of the Cannon land. From the spring of 1909 until June, 1909, I did not have the sheep camp at the same place all of the time. I know where the cabin was on the Cannon land. My sheep camp was a mile and a half, maybe not that far, a mile and a quarter from that cabin. During the time I was working for Mr. Storey in the spring of 1909, until June 1909, when I quit, I was at and around that cabin. I was there most of the time in May. From the first part of May up to June when I quit I had the sheep on the Cannon land, and had my camp right on the Cannon land. My camp during that time was three or four hundred yards from the Cannon cabin, it was right beside the cabin, that is close to the cabin. I was grazing the sheep up and down the creek on the same section Mr. Cannon's ranch is on, and outside of that too, and I grazed the sheep on the Cannon land. I grazed the sheep on the Cannon land by Mr. Storey's orders. I think I put my camp on the Cannon land about the first of May. I moved the sheep up there about the first of May, maybe a little bit in May, when the lambs were big enough to move. Mr. Storey moved them from the shed to Mr. Cannon's place. I think I was there about three weeks as near as I can tell. When I went to work for Mr. Storey in the fall of 1908 that cabin was on the Cannon place. As long as I camped there the door was open. In 1908 the door was open and the cabin was in poor condition. The floor of the cabin was in bad condition, cattle had been in there and I

suppose horses had too. If I remember right there was some window lights broken out and on the northwest corner the dirt was off the roof, that is it would leak if it would snow or rain, it had a dirt roof. Of course I didn't pay much attention to it but it was not fit for a person to live in. As near as I can tell the cabin was probably 16x24 feet, a log cabin with a dirt roof. It had a window on the west and a door on the south. In May 1909, about that time, the door wasn't open and the window was closed. That is boards were nailed over them, or put on hinges as near as I could tell and hooked on the inside. They were shutters put on from the outside so that they could be swung out and in. Of course I never investigated them, but I think they were on hinges so that they could be opened and closed. After I quit working for Mr. Story in June, 1909, during the balance of the year 1909 and during 1910, I had occasion to travel back and forth by the cabin. There is a road that runs right close to the cabin, it is not over twenty-five steps from the cabin on the west side. I used to go by there going to town once or twice a week. To the best of my knowledge I never saw Mr. Cannon on the homestead. When I had my sheep camp there I did not see Mr. Cannon on the place. From the first of May up until the time I quit in June, 1909, I saw Mr. Cannon on the Storey place frequently, I was there several times and I saw him working there. When I was at the Story place once or twice, I think for supper, Mr. Cannon was there and ate his meals. During that time Mr. Cannon was

breaking horses, driving horses, on the Storey place. After I quit working for Mr. Storey I saw Mr. Cannon on the Storey place in 1910, I seen him go up there twice. One Sunday morning he went up towards his place and came back, and the next time I seen him was when he built his little building. In 1910 I saw Mr. Cannon around the barns on Mr. Storey's place, it was around what they call the trotting barn, where he had his trotting horses. On the Cannon place in 1909, there was, besides the cabin, an old corral and I think an old chicken house. In 1910, I think, there was a small barn put up there, in the spring of 1910. It was about 10x12 feet. That building has since been taken away.

Cross Examination.

(By MR. HARRIS.)

I went to work for Mr. Storey in October, 1908, and continued in his employ to the best of my knowledge until June, 1909. I didn't finish my work in April, 1909. He was lambing in 1909, in April and in March, if I remember right, I think after the lambing season I remained until June sometime. Of course I might be mistaken as to that, anyone might. My business was herding sheep and tending sheep camp. In 1908 when I worked for Mr. Storey I herded the sheep there until the weather got so bad he had to feed the sheep. I moved them in and fed them that winter. I was there at the ranch helping do the chores, milking, hauling hay, feeding the sheep and feeding the stock until in March sometime and we commenced

to work with the sheep again, lamb out, lamb the sheep, that was I think in March and April. We started lambing that year I think in March, about the 15th, and I think we got through about the 1st of May, if I remember right. I saw Mr. Cannon build the barn on his place. Mr. Cannon was residing at that time at Mr. Storey's, he was coming from that was from the ranch. I was not stopping at Storey's at that time. At that time I was living right above on the same section Mr. Cannon's ranch is on, I was living on Mr. Storey's land, about three-quarters of a mile south of the Cannon place. After I left Mr. Storey's employ in June, 1909, I was not at the Storey place frequently, and I do not know where Mr. Cannon took his meals after June, 1909. When I would see the Cannon place I would be going right through it going to or coming from town. After I quit working for Mr. Storey in June, 1909, I lived at the Harris' place about three miles north of the Cannon place. My observations of the Cannon place was while going to and returning from Park City. I would go to Park City maybe once and maybe twice a week. Sometimes I would go by the place in the morning and come back in the afternoon. Would go by about nine, half past nine or ten o'clock in the morning and would return between three and four or four and five in the afternoon. I never saw Mr. Cannon at his own place that I know of. I saw him building the little barn in the spring of 1910. Aside from the times I have mentioned, I don't know where he resided, made his home or took his meals,

or where he slept. I only saw him on the road driving horses from Mr. Storey's place to town and back. So far as I know he might have resided on his homestead, taken his meals there and slept there, and made it his home to the exclusion of one elsewhere.

BY THE COURT: When was proof made in this case?

MR. HARRIS: January 24, 1911.

WILLIAM H. HARRISON, being first duly sworn as a witness for and on behalf of the complainant, testified as follows:

Direct Examination.

(By MR. WHEELER.)

My name is William H. Harrison. I am a farmer and reside six miles from Park City. I am acquainted with Mr. Storey and have known him about eight years. I know Harry Cannon and have known him about the same length of time. I never had any great acquaintance with him but I knew who he was. My postoffice address is Park City and I reside about six miles north of Park City. I live up the creek from the Storey place, a little west and north. I know where the Cannon homestead is and am acquainted with it. During the years 1909 to January 24, 1911, there was just a little log cabin on that place, I should judge about 14x16, might be a little one way or the other. I had occasion to pass over this tract of land every time I went to or returned from town or had any

business down the valley I went by there. I would go right through the land. A short cut to the road went right through the land. The cabin was twenty or twenty-five feet, something like that, from the road. Of course some weeks I would go oftener than others, sometimes may be I would not go for ten days, but taking everything into consideration I averaged about as much as twice a week from May 1, 1909, to January 23, 1911. On some occasions I would go down to Park City in the morning and come back at night, and other times I would go down and right back home again. At that time I was doing quite a good deal of work on the river bottom and lots of times I would go down early in the morning and come back, sometimes would go down and come right back. I made trips backward and forward whenever the occasion presented itself. Between May 1, 1909, and January 24, 1911, all that I ever knew Mr. Cannon doing was training horses for Mr. Storey or something of that kind. I believe he resided at Mr. Storey's. I understood that he was there working for Mr. Storey all the time. I was on the Storey ranch once or twice. I saw Mr. Cannon driving Mr. Storey's horses I suppose. From May 1, 1909, to January 24, 1911, in passing the cabin I never saw anyone there at all. I never saw any smoke coming out of the chimney. During that period of time I saw some of Mr. Storey's teams and men working in the field, I suppose putting in the crop or attending to it, I didn't pay any particular attention to what they were doing. I saw some land

plowed there, I should guess somewhere about eight acres. All the teams I ever saw working there were Mr. Storey's teams and men. That cabin had been on the place ever since I have been in the country, that is eight years this fall. I remember a fence being put around the plowed land, but cannot give you the date. The fence there in 1909, was just a little corral, the other fence was put there a little over a year ago, out on the north line clear through the whole length of the place. In 1909 there was no wire fence with posts placed on the land. Up to the time Mr. Cannon got hold of it, the cabin was standing there without any doors or windows in it. The holes were there and some time after he got hold of it, a long time after he got hold of it there was a door put up there but I don't know whether window lights or not. The window was nailed up with boards. I looked into the cabin when I first came to the country but not after that. I think the boards are still on they were the last time I went past the cabin. I remember of a little barn being built there, cannot give you the date, but I think it was about the time Mr. Storey got hold of the land. That barn was there only a short time. It was only a little small contraption of a thing, would hold about three horses I think. I don't think it remained there a month after it was put up. During the years 1909 and 1910 I passed by the cabin as late as eight or nine o'clock at night, but I never saw any lights in the house. I passed by there in the winter time when there was snow on the ground during the years 1909,

1910 and 1911. I never saw or noticed any trails or paths made around the place when there was snow on the ground. If there had been any more than likely I would have seen them. I never noticed any, and never saw anything that looked like they were living there. I know August Kirk and I understand he was working for Mr. Storey by the month in 1910. I seen him working on the Cannon land.

Cross Examination.

(By MR. HARRIS.)

If there was any snow when I went by there it would be on the ground. I might have been by there when there was snow on the ground and it might have been bare. I saw Mr. Cannon working on the barn when he was building it. I would not try to tell you the year. I never investigated the house. So far as I know it might have been furnished, might have been plumb full. At any time I passed by there Mr. Cannon might have been in the house, I would not say he was not. I never inquired or looked in there to see, although there were no signs of anyone being there. The board over the windows I could not tell whether or not they were hanging on hinges. So far as I know the ground might have been plowed and seeded under a lease arrangement between Mr. Cannon and Mr. Storey, I know nothing about their business. All I know is that I saw Storey's teams and men working that ground. I don't know whether Mr. Cannon or Mr. Storey put the fences on the land, they were put there about two years ago, if I remember right. When I

said I saw Mr. Cannon driving horses that I presumed were Mr. Storey's I never knew of Mr. Cannon owning any horses. These horses I saw him driving were Mr. Storey's racing horses, trotting horses or something of that kind.

Re-Direct Examination.

(By MR. WHEELER.)

When I passed by the cabin in the summer time there was no signs that anybody was living in the house. There was no garden or nothing to draw your attention that I could see.

MISS ROBIN HARRISON, being first duly sworn as a witness for and on behalf of complainant, testified as follows:

Direct Examination.

(By MR. WHEELER.)

I am seventeen years of age and live seven miles north of Park City. I know where Mr. Cannon's homestead that he took up was, and I know where the cabin was upon that homestead. Beginning with May 1, 1909, up to January 24, 1911, I had occasion to pass by that cabin during the school months; the cabin was between my home and the school. I would pass by the cabin going to and coming from school. The road ran right close by the cabin, about as far as from here to the other end of the room. I never at any time saw anybody around close to the cabin, but I did see some people building a barn there when I went

by one time. During the time that I passed by there in the years 1909 and 1910 up to January 24, 1911, I couldn't say that anybody was not living in the cabin, but I never saw anybody living in it. The window looked there was some boards nailed up over it. I never saw any garden around the place. I know Mr. Storey and know Mr. Cannon by sight, but I was never introduced to him. I saw Mr. Cannon on the place once; that was the time he was building the barn. I don't know how big a barn it was, but it was not very big I know. I passed there in the winter time when there was snow on the ground, and I never saw any tracks or paths around the cabin except some horse tracks and I never noticed any smoke coming out of the chimney of the cabin. I looked into the cabin once and that was when the boys were around there getting some rabbits, but I do not remember what year that was. I have been going to school there from 1909; started in the fall of 1909, up until the spring of 1914. The time I looked in the cabin was two or three years before I quit school. It was before the barn was built; quite a while before, but I don't remember just when. When I looked in the cabin I saw a table in there and a stove and bed. There was a floor in the cabin and in one place it was broken down. There was some dishes in the cabin, enough I guess for one person to use. There was not any groceries in there though. The windows at that time were nailed up —looked like boards nailed across them. The general appearance there at that time did not indicate that

any person was living there. There were no indications about the house or inside the house that any person had been living there recently. From the time I started to school in 1909 until January 24, 1911, I went to school regularly. School would begin in September and end the last of May. I went past that place regularly every school day when I went to school—that would be twice a day, going to school and coming from school.

Cross Examination.

(By MR. JOHNSTON.)

I don't know exactly how far my home was from this cabin, but I judge about three miles and a half north of it. Mr. Harrison who just testified is my father. The Cannon cabin was about half way between my home and the school, so that I had to go about seven miles to school. I am now seventeen years old. In going to school I would ride and would go past this cabin going to school about eight o'clock in the morning or a little after, returning ^{home} about five o'clock I expect—somewhere between four and five. My younger brothers would be with me; one is fifteen and the other ten. I went from September 1909 to the last of May, 1910, and from September, 1910, until May, 1911. I don't remember how much snow there was on the ground the winter of 1909 and 1910, or the next winter up to January, 1911. I saw the horse tracks around the cabin when I went to school. I would say that I saw Mr. Cannon building the barn within two years after I started to go to school. It was after I started to go to school. He built it either

the year I started to go to school or the year after. I don't know whether there ever were any horses kept in that barn, and I never saw anything to indicate that any stock had been there. I said that I looked into the cabin when the boys were hunting rabbits—I mean my brothers. The boys did not go in the house with me, but they were out around the house. The rabbit ran under the house and I just went in for a minute and came out again. I guess I was in there longer than just a minute, but not as long as five minutes. I never mentioned anything to anyone about being in the cabin until the government inspector inquired about it last summer I think it was—that is the gentleman sitting behind Mr. Wheeler. From the day I went in there up until the time he spoke to me about it, I hadn't thought about what furniture was in the house, but I had kept it in my mind. The dishes were on the table. I did not look around but I didn't see any groceries or provisions. I did not make any investigation to find out for certain whether there was any there. I think there was some bed clothes on the bed, but I didn't notice whether there was any trunk there. I didn't notice whether these boards on the outside of the window were nailed onto the house or hanging on hinges; all I noticed was that boards were on the windows. But I did not notice whether were any window lights in. I didn't go to school in the fall of 1908, but in the spring of 1909, as that was the first time we lived there.

MRS. MAUDE KIRK, being first duly sworn as a witness for and on behalf of the complainant, testified as follows:

Direct Examination.

(MR. WHEELER.)

I reside at Park City. During the year between May 1, 1909, and January 24, 1911, I lived on one of the Storey farms—part of the time down by his house. The first year I lived on one of the farms, down by his house. I know Mr. Harry Cannon and first met in the spring of 1909, at Mr. Storey's. He was breaking race horses at that time for Mr. Storey, and lived at Mr. Storey's when I knew him. I saw him there at Mr. Storey's at meal times and between meals. Between May 1, 1909, and January 24, 1911, I saw him his meals at Mr. Storey's whenever I was there and I was there off and on at times. From September 10, 1910, until May, 1911, I was there helping work. From May 1, 1909, until March, 1910, when we moved down by Mr. Storey's house, I was not at Mr. Storey's so very much, but in March, 1910, we moved down to about eighty rods from Mr. Storey and from that time until January 24, 1911, I had occasion to visit Mr. Storey's place frequently, and I would see Mr. Cannon eating his meals at Mr. Storey's every day while I was there. I helped do the cooking. Of course, I didn't do it all alone. That was between September 1910, and May 1911. I know where Mr. Storey's bunk house was on his place. Mr. Cannon didn't stay there—he stayed at what they called the trotting barn. The

trotting barn was east of the Storey house, not very far away, and on the Storey land. Mr. Cannon kept his clothes in the room where he slept in the trotting barn. I did some washing for Mr. Cannon. He asked me if I would do the washing and I did it. I never saw Mr. Cannon and Mr. Storey together only when they ate, but I would see them eating together at Mr. Storey's whenever I ate there—that is, where Mr. Storey was living. Mr. Storey was there most of the time. Of course, he would go to town once in a while. I didn't see Mr. Cannon and Mr. Storey around the trotting barn together, but when I would see them together would be at Mr. Storey's house. In March, 1910, until January 24, 1911, I would eat my meals at Mr. Storey's once and sometimes twice a day during the winter months. While I was cooking at Mr. Storey's Mr. Cannon was there regularly, and Mr. Storey also took his meals there regularly.

Cross Examination.

(By MR. JOHNSTON.)

We first lived on one of Mr. Storey's farms that is called the Murray ranch, that was the first year we were there. We lived there until March, 1910. From March until September I helped off and on at Mr. Storey's, and during that time we were living about eighty rods from the Storey house and during that time I would only Mr. Cannon or Mr. Storey when I was at Mr. Storey's house. During that time I was every day for a while, maybe sometimes, I would not

be there one day out of the week—that would be from September until March. From March, 1910, to September, 1910, I was at the Storey house frequently. I visited Mr. Storey sometimes in the morning, sometimes in the afternoon and sometimes in the evening. I should judge during that time I was there once every day anyhow. I had to go over every day because we bought milk and butter and I had to go over after it. That was from March to September, 1910. Sometimes I would go after in the morning and sometimes in the afternoon. I did not stop for my meals at that time. I have three children—sometimes the children would go after the butter and milk—often we would go together, and at other times they would go when I would not. I didn't see Mr. Cannon there every time I went over after the butter and milk, but I did see him there when I took my meals there between September, 1910, and May 1911. At that time I was living in one of Mr. Storey's houses with my family about eighty rods from the Storey house. I was working for Mr. Storey at that time, helping around and cooking off and on. During the winter of 1911 when Mr. Storey's daughter was sick, I cooked there quite often. From the 21st of January, 1911, until May, I was there then nearly every day, and that is the time when Mr. Cannon was living in this room in the trotting barn. Prior to that time I couldn't swear that he slept there all the time, but I supposed that he slept there as his bed was there. His bed was there from September, 1910,

until 1911. During the holidays I was at Mr. Storey's some of the time cooking—once a day perhaps, and before the holidays in 1910 I was there quite frequently—once a week at least helping cook—I was there generally before dinner, leaving for my home about four o'clock in the afternoon. From January 21, 1911, until May 1911, I would be there for dinner, sometimes for supper. I saw Mr. Cannon's bed in the trotting barn and I saw Mr. Cannon in there—he must have slept there. I never saw Mr. Cannon on his homestead. I never was in his cabin and was never up at his cabin in the night time. I don't know but what some other person working for Mr. Storey occupied this bed in the trotting barn. Mr. Storey had two other men there besides Mr. Cannon. Mr. Storey asked me to do his washing and he paid me for it. I don't what clothes Mr. Cannon had in that room, as I didn't take any notice of what clothes he had. That was supposed to be his room and I don't think anybody else did sleep there. I am just giving you what I think, what I suppose, not what I know.

Re-Direct Examination.

(By MR. WHEELER.)

I knew this was his room and that I say that it was his room, because they, that is, Mr. and Mrs. Storey, always called his room. I said that I saw some of his clothes there, and I know they were his clothes because I saw him wear them. I heard Mr. Storey say quite frequently that this was his room.

I have been in the room. When I did his washing he brought the clothes to me and came and got them. I was in that room twice. From March, 1910, until September, 1910, Mr. Cannon was there breaking horses, and I have seen him eating his meals at Mr. Storey's during that time when I ate there, and I ate there during the time I worked there between March and September, 1910.

Re-Cross Examination.

(By MR. JOHNSTON.)

When I heard Mr. Storey that was Mr. Cannon's room it was before Mr. Storey's daughter was sick, but I do not remember what brought up the conversation, or the occasion of him saying so. I know it was before his daughter was sick because when I first went to work there I heard them say so.

FRED H. FOSTER, being duly sworn as a witness for and on behalf of the complainant, testified as follows:

Direct Examination.

(By MR. WOODY.)

I am register of the United States Land Office at Billings, Montana. As such register I am the custodian and have in my possession the records showing entry upon public land in the Billings district. I have here tract book showing the homestead entry of Harry Cannon. This tract book also shows entry made by Walter D. Storey for the same tract of land which was entered by Harry Cannon on the relinquishment of the Storey entry.

(By Mr. Woody.)

I desire to offer that entry in evidence.

(By MR. HARRIS.)

It is objected to as being incompetent as well as immaterial.

(By THE COURT.)

The objection will be overruled.

"Homestead Entry No. 5561. Bozeman, Montana. Serial. Made July 5, 1904, by Walter D. Storey for the West half of the Northwest quarter, the Northeast quarter of the Northwest quarter, the Northwest quarter of the Northeast quarter, section 24, township 2 south, range 22 east. Billings Serial No. 01235. Cancelled by relinquishment May 1, 1909, at 9:40 A. D."

Cross Examination.

(By MR. JOHNSTON.)

There was another relinquishment before that. The first filing was made by Andrew H. Murray, Bozeman Serial 4142.

AUGUST KIRK, being first duly sworn as a witness for and on behalf of the complainant, testified as follows:

Direct Examination.

(By MR. WHEELER.)

I am a farmer. I am acquainted with Walter D. Storey, and also with Harry Cannon, and have known both of those men since the spring of 1909. I went

to work for Mr. Storey in the spring of 1909 and at that time Harry Cannon was driving or breaking horses for Storey, and he continued to be driving or breaking horses for Mr. Storey for a couple of years. While Mr. Cannon was driving and breaking horses for Mr. Storey, he roomed in what they called the trotting barn and he had trunks in the trotting barn. I know where Cannon's homestead entry was, but I never seen him there from May 1, 1909, to January 24, 1911. During the summer months of 1909 and 1910, he took some horses and went away, but I don't know where he went to and don't recollect how long he was going but I would say four months more or less. There was some land cultivated on Mr. Cannon's homestead. Charely Storey, a brother of W. D. Storey, plowed it the first year, but I don't remember who plowed it the second year. I planted the crop. The first year I planted corn and the second year I planted beets. I did the work under Mr. Storey's direction and Mr. Storey paid me for doing it. The teams and machinery that were used were supposed to be Mr. Storey's. They were the same teams and machinery that I used for Mr. Storey right along. The seed was furnished by Mr. Storey. I don't know who harvested the crop, but there was a lady, German lady, who tended the beets. From May 1, 1909, to January 24, 1911, or the first year that I was there, Mr. Cannon got his meals at Mr. Storey's whenever he was there. The second year I don't know where he got his meals. I don't know who built the barn on the homestead.

but I saw it there. During the winter of 1910 and 1911 I had occasion to go past the cabin on the Cannon homestead once or twice a week. During that time there was no indication that anybody was living in the cabin. The windows were boarded up. During the winter of 1910 and 1911 I saw Mr. Cannon ad talked with frequently. At that time he was stopping at the trotting barn at W. D. Storey's, and was eating his meals at Mr. Storey's. During that time Mr. Storey was home and ate his meals at home most of the time. I ate my meals there twice a day during that time, dinner and supper, and we all three ate together. ~~I know that Mr. Storey and Mr. Cannon were together.~~ I know that Mr. Storey and Mr. Cannon were together some about the trotting barn. The horses Cannon was taking care of were supposed to be trotting horses—race horses.

Cross Examination.

(By MR. JOHNSTON.)

During the summer of 1909 I was living at one of the Storey ranches known as the Murray ranch. That was about three-quarter of a mile from Mr. Storey's home place. I was working for Mr. Storey that summer and worked on the home ranch some. I continued to live at the Murray ranch until the spring of 1910. While I was living at the Murray ranch, I would be down around the barn and house on the home ranch. All that summer I took dinner and supper at the home ranch. It was in the spring and fall that I saw him taking his meals at the Storey

place. He was away that summer with some horses—the middle part of the summer, June, July and August. He was going about four months, more or less. I don't know what he was doing with these horses while he was away. In 1910 he left in the spring or fore part of the summer and stayed until towards fall; he was going may be four or five months. I said that Mr. Cannon roomed in this trotting barn, but did not see him sleep there. I supposed he slept in the trotting barn where he had his bed. I was never up at his cabin during the night time and do not know whether he ever slept in the cabin or not. I don't know where he slept a single night from May 1, 1909 to January 24, 1911. During the winter I was on the Cannon homestead may be once or twice a week. I was trapping that time and would go by the cabin in the day time or towards evening. I never was in the cabin but that I saw that the windows were nailed up. I didn't examine to see whether the boards were nailed to cabin or hanging on hinges. There were no window lights—you could look through the cracks of this shutters. I looked in a time or two—peaked in that was all—that was in 1910.

Re-Direct Examination.

(By MR. WHEELER.)

I said the room in the trotting barn was Mr. Cannon's room because he had his trunks there. On the homestead beside the cabin there was a small building—a kind of a stable. That remained there may a

month or two months, but I don't know what became of it.

Re-Cross Examination.

(By MR. JOHNSTON.)

I don't who built the stable there and I don't know how long it remained there—I didn't pay any attention to it.

MRS. W. H. HARRISON, being first duly sworn as a witness for and on behalf of the complainant, testified as follows:

Direct Examination.

(By MR. WHEELER.)

My name is Jessie Harrison and I am a wife of William H. Harrison who has testified here. I am acquainted with W. D. Storey and I also know Mr. Cannon. I know where the Cannon homestead is. I live about four miles from there. Between May 1, 1909, and January 24, 1911, I had occasion to pass by there at different times; sometimes twice a week going to town. I passed by there sometimes in the evening or at night with the children, and I also passed by there in the winter time when there was snow on the ground. I never saw anyone there and I never saw any indications of anyone living there. The window was nailed with boards straight up and down and the door was ajar when I went by there. I never did see any smoke coming out of the chimney. When I went by the place in the winter time I never noticed

any tracks or paths there, and I never saw any light in the house when I passed there in the evening.

Cross Examination.

(By MR. HARRIS.)

Between May 1, 1909, and January 24, 1911, I passed there a good many times at night, but I couldn't tell you how many times. I would go by there at different times sometimes twice a week, and there were times when I would not go so often. In the winter time I would go less than during the summer and fall months, but I would go whenever it was necessary. I didn't take any observation as I passed to ascertain the condition of the earth or the condition of the cabin with a view of ascertaining whether or not anyone actually stayed there, although I think if anybody lived there they ought to have a window. As far as I remember the boards were nailed on the window. I don't remember how many times I passed there and observed that the door was ajar, but I do remember to have seen it ajar.

W. J. LOEFFER, being first duly sworn as a witness for and on behalf of the complainant, testified as follows:

Direct Examination.

(By MR. WHEELER.)

My business is principally farming. I live at Park City and have lived there since 1892. I am acquainted with Mr. Storey and also a little with Mr. Cannon, but

not so very well acquainted with him. I know him when I see him. I know where the ground lays that Mr. Cannon had in his homestead and I know where the cabin is on that land. Between May 1, 1909, and January 24, 1911, I passed by there quite frequently. In passing by I would go within forty or fifty feet of the cabin. In going by there I was generally looking after stock, as I had cattle and horses on the range. I don't recollect during that time of ever seeing anyone on the place, and I don't think I ever saw any indications of anybody living there. If anybody had lived there I probably would have seen some indications and if they had lived there steady I am sure I would. If they had lived there for fourteen months continuously, I think I would have seen some indications. I never did see any light in the house or any smoke coming out of the chimney. The window was nailed up a part of the time, but as to the door I don't remember. It seems to me there was a door there, but that it was closed. I don't think there was any grass to speak of within four or five feet of the door. I don't remember of passing there in the winter time, although I might have done so as I hauled some wood during that winter. I don't remember when the shack they called a barn was built there.

Cross Examination.

(By MR. JOHNSTON.)

I was living at Park City and my farm is a mile east of Park City. I would be pretty hard for me to say from November, 1909, to January 24, 1911,

how often I went passed the Cannon cabin, but I would think it would be safe to say fifty times and more. I was looking after cattle and horses. I never noticed whether the boards were nailed on the cabin or hanging on hinges. I never was in the cabin after Andrew Murray who built the cabin moved out.

Plaintiff rests.

HARRY CANNON, being first duly sworn as a witness on behalf of the defendants, testified as follows:

Direct Examination.

(By MR. HARRIS.)

I am one of the defendants in this case. I reside at Birkeley, California, at the present time. I am the person named in the complaint who made the home-stead in controversy. I established my residence on this land May 1, 1909. There were some improvements on the place when I made my filing and I improved the place afterwards. When I made the entry the house was not in liveable order and I made a comfortable liveable house of it by putting in floor and window, window curtain and covered the roof. The windows were out of the house and I put in new windows and put in window shutters over the windows and I put in a floor and re-covered the roof. The window shutters were with board and hinges and put on to hook on the inside with a hasp so if I went away I had them on there so I could shut them up and

protect the windows from being broken out. I had a suitable outfit there for keeping house. I had three stoves, a heating stove, and I had a good bed, springs and mattress and good cover. I had a table, dishes, cooking utensils, my clothing and what stuff I have. Everything I had in my possession I had there—all my belongings. I kept provisions there, bacon, flour—most always bacon and flour there all the time. I had a chest there I kept the stuff in and closed up to keep the mice away from it. I had other articles of furniture there besides those I have mentioned—I had everything to keep house. I had all my belongings there—everything I had; chairs, furniture, bedding, cooking utensils and clothing. I kept part of my clothing in a trunk and part of them hanging up on hooks. After I established my residence on the land I continued to live there—that was my home from the time I filed until I left the country and went away. It was continuously my home all the time from May 1, 1909, to April 4, 1912. While I was living on the land I had some of it cultivated. I had about ten acres—something like that—under cultivation. I made a deal with a man to plow the land, furnish the seed and I would give him what he could raise—that was W. D. Storey. While I was occupying my homestead I was in the horse business, handling driving and road horses. I kept these horses at the Storey ranch. I rented a barn from Mr. Storey down there and kept part of them down there. Of course, the horses I was using riding and driving I kept at my place at the time I was up

there and when I wasn't I kept them down at this place. I made arrangement with Mr. Storey for these stables in 1907. I was at that time at Big Timber handling horses there—everybody's horses. In 1907 I thought I could have better quarters down there and I rented a barn. I paid him five dollars per month for each horse I kept there, and he furnished the horse feed. I had the horses there at Mr. Storey's place all of the time or practically all of the time from the 1st day of May, 1909, until 1912, I had horses there for different parties, in Big Timber, Columbus and Billings. Mr. Storey had no interest whatever in these horses. No one except myself was interested in any way or manner in homestead entry. I made the homestead entry and established my home there in order to have a horse ranch up there, as I was in the horse business. In handling the horses over at the Storey ranch I would be away from my homestead in the day time. I had horses down at the barn and I had kept my horses there through the day when I was down there and I drove the horses, drove up around my place and down to Park City. There was a track there and I drove the horses on the track part of the time and on the road part of the time, and at my place part of the time, and around anywhere through there. At night I would go home to my claim, my homestead entry. The race track was on Mr. Storey's land. I took my meals most of the time at my own place and part of my meals at Mr. Storey's. I ate breakfast most of the time at my home and part of the time at his place. Part of the time I

boarded some. If I had quite a few horses so that I was busy and did not have time to cook I boarded with him down there. When I was boarding down there I could leave up there about seven o'clock in the morning and when I was boarding myself, doing my own cooking up there, it would be around half past six, or something like that when I would leave my place. When I was boarding at Storey's I paid \$4.50 a week —paid it to Mrs. Storey. I was away from my home-stead a short while in the summer—one summer for fifty-two days. That was the second summer I was away and it was in July. I took some horses I had in training to Bozeman to develop—to work them there some. After I got through at Bozeman I came back to my place. In 1909 I was away about the same length of time in mid-summer—say, in July or August. The first summer I was only away three weeks. I had some horses down there I was working for other parties, and I went away to deliver them, and was going practically three weeks. Those absences were necessary for me to earn a livelihood. When I made my entry there was some fencing on the land—it was partially fenced. There was a fence on the west side of the place and there was a fence on the north side, but it was not in very good condition at that time. On the south side there was a field fenced in and on the east side, a rim rock fence—not a wire fence, but a natural rim rock fence. I repaired the fence and put in new fence on the north side of it—used this rim rock fence and on the south side put in a new fence. I ran the

fence from the rim rock down through to that field so that it enclosed this side, so it was fenced. I bought posts and wire, staples and nails and lumber for the fencing. When I made the filing—it was relinquishment—there were improvements on there, a log house and a log barn. Later on the roof on the barn got bad and out of repair so I built a new barn. I used that barn and house to begin with for a while, but to be sure and safe and rather than put new material on the old barn, I built a new barn. The barn I built was still on the place when I left the country. I built the barn—late along in 1911 or the first of 1912, right along there. I left the country the fourth or fifth of April, 1912. At the barn I used on the Storey place there was one pretty small room there—used to be a harness room. I did not have anything to do with that room. All that I had anything to do with was the saddle I had in use with the horses there. Sometimes I had one horse and some times five or six. This room they speak of there is the harness room—kept the harness in there and horse boots—harness, blankets—horse blankets. I did not have my truck there—did not have my bed there, and I did not sleep there. There was a trunk in there—what we call a horse chest. It is locked up the same as a trunk and used to put horse boots in, horse blankets, harness and stuff like that that you are shipping or putting, and I had that in there. It did not belong to me. Of course, I had my harness in that room—would hang them up in there and take them in and out. I sold the land to Mr. Storey.

The transaction came up in this way: My business was handling horses and always had been for years before that and since until the last two years. I was offered a position over in Washington to take charge and handle the fair grounds and race track. I was corresponding with a friend in that place and they wanted me to arrange to go over there. When I got ready to go over there, after I had closed the deal and was going over, I made a proposition to Mr. Storey to sell him my place, and he asked me what I wanted for it, and I told him a thousand dollars. I sold it to him for a thousand dollars. That was just two or three days before I left. I never thought about selling this place any time before that, because I had the place over fourteen months after I proved up and got the title to it. After I made arrangements to go to Dayton and take the fair grounds and race track I thought then I would dispose of the place. In payment for the place Mr. Storey gave me a note for one thousand dollars at six per cent., payable on demand. He gave me this note on April 4, 1912, and it was paid I think May 15, 1912. I deposited the note in the Columbia County National Bank, at Dayton, Washington, and they sent it back here and collected it for me and I got the money from the bank at Dayton through the collection. I furnished the money myself to make proof and perfect my entry. I got the money working at my business of handling horses, buying, selling, handling and developing driving horses for different parties. I ran a public stable. I handled horses for

parties at Big Timber, Columbus, Billings, Bozeman and different parts of the country around. I carried a deposit in the Park City State Bank. It was a deposit drawing interest at six per cent. I made my homestead entry my home to the exclusion of one elsewhere for substantially the period of fourteen months before I made final proof. At the time I tendered my application to submit final proof I was actually living on the land, and at the time final proof was actually submitted I was living on the land.

Cross Examination.

(By MR. WHEELER.)

I first came to that country down there in 1902. From 1902 up until I made my entry I was working at the horse business. I went to work down there for Mr. Storey in 1902 and worked for him three years until 1905. I quit in 1905 and went to Big Timber, Montana, and had charge of the track and fair grounds there until the fall of 1907. I was handling and running a public stable, handling everybody's horses—in the horse business, buying and selling and raising and driving and developing drivers and harness horses. In 1907 I made arrangements with Mr. Storey for his barn down there to keep the horses in. I would come and locate down there and do the same business, handling driving horses, educating horses and buying and selling horses. Under my arrangement with him I was to pay him so much a month for each horse I kept there, and I also had an agreement with him what he would board me for. He was to charge me four and

half a week for boarding me, and I started to board with him in 1907 and continued until 1909. Mr. Storey told me that he had relinquished this particular piece of land and I located on it the same day he relinquished. I did not walk up to the land office with him, but I was up there and when he relinquished I filed the same day. I knew he was going to relinquish, and I came to town and filed, but I don't know that I came with him. I did not come with him any more than he came with me—we came on the same train. After I took up this homestead I did not continue to board with him steady—only part of the time. I did not board with him nearly all the time I had the homestead. I built a stable on the place—sixteen by eighteen feet. It was a frame stable built out of boards—just common ordinary boards on the outside—not matched boards but good new lumber, and it had a board roof—a pitched roof. I built the stable myself and it cost me thirty or forty dollars. I bought the lumber at Fred Stoltz's Lumber Company at Park City. I ordered it myself and paid for it myself. That was the latter part of 1911, or the first part of 1912. I put in some new posts—fences with posts and wire. I got the posts from Mr. Stoltz and paid fifteen cents a piece for them. I don't remember what wire was worth at that time, but I believe I paid the regular price. I hauled the posts and wire out myself. I believe I expended around three hundred dollars for posts, wire, lumber and nails. I put a new floor in the house, right after I made final proof in the first part of May some

time. There wasn't a bed or a thing in the house when I made my entry. I had in the house three stoves: an oil stove, a range and a heater, and used all three of them. I used the heater to heat the cabin and some times used gasoline stove and some times the range to cook with. When I was located at Big Timber I was batching up there and living the same as I was when I came down there, and I shipped the stoves down with me from Big Timber. I did not pay anything to Mr. Storey for plowing the land. I made an agreement with him that if he would plow the land and put in the seed, I would give him what he could raise on it. So far as cultivating the land is concerned, it did not cost me anything at all. The only things I spent any money for outside the barn was putting in the floor and for this fence and fence posts, wires, staples, nails and lumber. The only lumber I bought outside the barn was for putting in the floor in the cabin. I put in the floor myself. I would say that it cost me thirty-five or forty dollars—at least forty dollars—for lumber and nails for the cabin. It was a board floor made of boards one inch thick and a foot wide and the windows I boarded up. The materials for the windows and the floor and for making the shutters would probably cost somewhere around forty dollars. It was new lumber that I used. The posts and the wire and staples for putting up the fence probably cost me around fifty dollars. The forty dollars for fixing up the cabin and the fifty dollars for the fencing makes ninety dollars, and that was all I expended outside of building the

barn. The barn cost from thirty-five to forty dollars in addition. That is all I expended for my improvements. Of course, most of the improvements were on the place when I got it. The house, hog and chicken house and log barn were there. I repaired and fixed them up, but paid nothing for them. The improvements I have told you about are the only improvements I placed on the land. I was developing and handling harness horses—standard bred horses—they were race horses. The track on Mr. Storey's land was probably two or three hundred feet over half a mile. From 1909 to 1911 I handled a few horses for Mr. Storey on the same condition that I handled horses for any other party. During that time I handled probably eight or ten colts for him. I had all of my own equipment, boots for the horses and harness carts, slings and complete equipment for handling and developing horses. There were six box stalls in the barn. Part of the time I would have all of them filled and part of the time I would not. Horses were coming and going all of the time. I got a dollar per day for each horse I handled, and furnished feed and barn room. All of the personal property, cart, harness and everything I was using in connection with the horses I kept that at the barn. I did not rent all six of the box stalls, but I had one horse I would have one stall—I would have possession of the number of stalls for the number of horses I had. I paid five dollars per month for each box stall I used and for feed and bedding for the stall. All of the equipment I was using I would

keep in the little room at the barn. I did not keep all my harness there, but kept some at my place. There never was any bed in that room at any time I was there, and I never slept there. The horse chest was there—some people might call it a trunk. My cabin was about a mile and half from the barn, and the barn was about three hundred yards from Storey's house. In the summer of 1909 I took three horses to Bozeman, one belonged to Mr. Deverill, a man living in Billings, one to Mr. Secrest, a man living at Bozeman, and one to John Asbury, Cashier of the Big Timber National Bank. I trained these horses at the Bozeman race track. This is 1910 I am talking about. I was there fifty-two days, and that was all the time I was absent during that summer. In 1909 I was absent during the summer probably about two weeks. I took some horses I had been training down there to Bozeman that summer—but I did not work any horses at Bozeman that summer—I took these horses up there to deliver them. Beginning with May, 1909, during the remainder of that year, I think I boarded at Storey's about one fourth of the time, and during the year 1910 about the same. When I went to Bozeman in 1910 I went to work these horses on the track. I remember when I made my final proof. That is my signature or a copy of it.

Q. Now, why was it, Mr. Cannon, that you stated at that time as follows: "Q. If there has been such absence, give the date covered by each absence; and as to each absence, state whether you, your family or

both, were thus absent and the reason for such absence. A. I went away about the 20th of December, 1910, and was going for about two weeks. I sold some horses and had to deliver them, which was the reason of my absence." A. I gave that for 1909 you got there; that should have been 1909. I went away to deliver some horses and I remember giving that in.

Q. Now, in answer to this question, Mr. Cannon, you stated:

"Q. When was your house built on this land? A. I bought the improvements on the place and the house was there when I went on the place." Why was it you swore you bought that house, Mr. Cannon, when as a matter of fact you did not buy it? A. I don't remember that that way. I might have said I bought it. They asked me about the house and I told them that the improvements was on the place when I got it.

I might have told them I bought the place at that time, but I don't remember what I did tell them. I meant that the improvements which I have told them —you will find later on there, you will find I stated the improvements was on the place when I got it.

Q. Neither did you tell them, Mr. Cannon, that you were absent in Bozeman for about fifty-two days during the years 1909 or 1910? A. In 1910 I did not think I was required to do it. My fourteen months was up the first day of July and I was never there until after the first of July. I filed on this place the first day of May, 1909, and the first day of July, 1910, made fourteen months—my fourteen months would be

up. I came up here and went to the land office and asked Mr. Harris if I was supposed to stay there from then on. I came down to make my final proof and he told me I wasn't required to stay there. He said, "Go where you want to." And I went to Bozeman after that, and that is the reason that I didn't put that in there. I did put in my absence when I was in Bozeman in 1909—that was the only time I was absent in 1909, it was along in the fall some times. In the summer or fall I was away once with some horses—took them to Bozeman and delivered them. In 1910 I was away fifty-two days, but I went after the first of July. I was not in Bozeman driving horses on the track in 1909. I was absent there when I stated in 1909, but they got it 1910. In 1909 I took some horses and delivered them but did not drive any.

Q. You also state here, Mr. Cannon, that: "Q. Describe fully and in detail the amount and kind of improvement on each sub-division. State total value of the improvements on the claim? A. A log house 15x20 feet, barn about the same size, corrals, cellar, cultivated land, fencing. Total five or six hundred dollars." As a matter of fact you never placed upon that land, and there was not upon that land, that amount of improvements, were there?

A. I think there was, counting the improvements that was on there when I went there. That house and stable was built and quite a lot of fence built there. What improvements were on the place when I came —when I got it—and what I put on there was well

worth five or six hundred dollars when I made final proof. The house was on the place when I went there, but I don't know when it was built. Ten or eleven or twelve acres of land, something like that, was cultivated.

Q. You also answered this question: "Q. Have you any personal property of any kind elsewhere than on this claim, if so describe where the same is located? A. No." That was your answer at that time.

A. Yes. Well, at that time, and I say now I had some carts and harness down at the place where I was handling these horses. I sold this land to Mr. Storey for one thousand dollars. It consisted of one hundred and sixty acres. At that time I don't think there was any land selling around in that neighborhood. Railroad land was selling at \$1.25 an acre. This was not all fertile land. Part of it on the west side and part of it on the east was about as any rim rock land. There was a creek—Valley Creek—running through it, and along the creek there was some good land. West end and east end was rough land. Albert Buster and Chester Roberts were my final proof witnesses. Chester Roberts was Mr. Storey's son-in-law. Mr. Buster worked for Mr. Storey some parts of the year and some of the year he didn't. At the time I made final proof, I don't know whether he was working for Mr. Storey or not. He was living on his own claim and had worked for Mr. Storey prior to that time. At the present time I am handling horses. At the time I made my final proof I supposed Buster was eating his

meals at Storey's—I know he was eating there when I ate there. There was probably eight or ten acres of the land that was under irrigation—that was land below the Cove ditch. That land is valuable land—as valuable as any land in that neighborhood. I don't know whether Mr. Storey knew when I was absent from my place in Bozeman. He knew, of course, when I was boarding at his place. I did not hitch up his horses when he went to town, and he had nothing to do with any part of the barn I was using, and was not under any obligation to me nor I to him. When I was at the training barn I would see Mr. Storey around there. He was probably there once in a while to see about his own horses, but the biggest part of the horses I had were from outside. When I had any of his horses he would pay me the same as anyone else—a dollar a day for each horse. There was not very much of the time I was handling any horses for him. He didn't have very many horses. He would have six or seven colts a year. During 1909 I had horses all of the time, some times I would have one and sometimes four or five, and at times in Big Timber I handled as many as thirty head. I didn't have anybody working for me after 1909. In the harness room there is no stove, but there is a place for a stove there. When I would get up in the morning and go from my place up to Storey's I either rode horse-back or drove in a cart. I always kept my horse out there in the barn. That is the reason I built ~~a new~~ ^{an old} barn there. I moved away from there the fourth ^{of April,} 1912, and I built the

barn a short time before I went away. The other barn that was there had dirt roof on it and some of the poles under the dirt looked like they were not good and take it with dirt that makes a pretty roof. When I boarding at Storey's I used to get away from there at five o'clock in the morning, but when I cooked my own meals probably around six o'clock—half past five or six, and would get back about half past six or seven in the evening.

Re-Direct Examination.

(By MR. HARRIS.)

I never measured the plowed ground to determine the exact acreage, and at the time I submitted my final proof I did not know the exact acreage—my statement was merely an estimate. With reference to the land under the ditch, I did not have any water right for it. I think of the whole one hundred sixty acres, probably fifty acres can be cultivated. I had some of the harness and some of the appliances I used in training horses at my homestead and some at the Storey place. I had at the Storey place what I needed down there. In estimating the value of the improvements that I made on the land, I took into account my own labor—that is what I meant, my labor and the stuff I bought and everything. After I returned from Bozeman, when I was absent fifty-two days, I lived on my homestead, and after I submitted my final proof I lived on my homestead. I put the floor in the cabin right after I made the filing. If I said on cross examination it was after I made final proof, that was a

slip of the tongue. Right after I filed I put the floor in my house and fixed up there to live in.

It was stipulated and agreed by and between counsel for the respective parties, plaintiff and defendants, that the patent for the land in question was issued to the defendant, Harry Cannon, under date of June 26, 1911; that it was received at the Billings land office July 11, 1911; that it was taken from the land office by Harry Cannon on April 3, 1912, on which date it was recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana; and that the deed in question from Mr. Cannon to Mr. Storey was dated April 5, 1912, and acknowledged on the same day.

B. L. HARRIS, being first duly sworn as a witness for and on behalf of the defendants, testified as follows:

Direct Examination.

(By MR. JOHNSTON.)

I am cashier of Park City State Bank at Park City, and have been such cashier since the bank was opened in 1907. I know Mr. Cannon and have known him since 1908, or 1909. From May 1, 1909, until April 5, 1912, he transacted some business at the bank. During those years he was on a homestead up Valley Creek and I understood he was breaking horses. I know of his having transactions with horse men through checks being cashed at the bank and part of the money left there. These checks were made to Harry Can-

non. Mr. Storey had no connection whatever with the business that I know of. About the time that Mr. Cannon commuted his entry he cashed some certificates of deposits. He had a series of certificates of deposits, running from 1909 to 1912. I know something about a note from Mr. Storey to Mr. Cannon for one thousand dollars given in 1912. It was in connection with the sale of a piece of land. I drew the deed and took the acknowledgment, and I saw Mr. Storey sign the note at that time. The note was given to Mr. Cannon. I saw the note afterwards when it was sent to us for collection from Dayton, Washington—that was about thirty days after the note was drawn. It was payable on demand. The draft in payment of the note was drawn May 13, 1912, and mailed to Columbia National Bank at Dayton, Washington, and cashed by them at the Chase National Bank, New York, May 21. It was paid in Dayton sometime between the 13th and 21st. W. D. Storey paid the note. I don't think I was ever out at the Cannon homestead.

Cross Examination.

(By MR. WHEELER.)

All I know about the Cannon homestead is what Mr. Cannon told me, and all I know about what he drew any money out for is what he told me.

A. E. BUSTER, being first duly sworn as a witness for and on behalf of the defendants, testified as follows:

Direct Examination.

(By MR. JOHNSTON.)

I live in Park City and have lived there about ten years. From May 1, 1909, to April 5, 1912, I lived two miles west and north of Park City. I know Harry Cannon and also W. D. Storey. I have known Mr. Storey about ten years, and have known Mr. Cannon seven or eight years. I know Mr. Cannon's homestead entry. I was on that place after Mr. Cannon made his filing and before he made his final proof. I was there helping him fix his house. In the spring he filed on his land—that must have been in May. At that time I was living about a mile from there. From May, 1909, until January 24, 1911, I was on his place at various times. I helped Mr. Cannon put in a floor in the cabin, put in the windows, and put shutters on the windows. The shutters were hanging on hinges and fastened with buttons. There were window lights in the window, but I do not think they were there when Mr. Cannon took the place. The cabin was in good shape after we finished this work. It was about the same as the cabin of ordinary homesteaders. I have been in many homesteader's in this country. This cabin was about sixteen by eighteen I think. There was also a stable, chicken coop and corral on the place. There was a barn built there later on by Mr. Cannon. I was there when he was doing part of the work. I

think this barn was built after he made his proof. I was one of his witnesses at the final proof. The place was fenced. When Mr. Cannon put it up there was a fence on the west. Mr. Cannon afterwards fenced the north end—he enclosed it. I think the improvements made by Mr. Cannon was worth about a thousand dollars. I mean that after he had finished all of the improvements on the place were worth a thousand dollars. I never made any estimate of what each particular improvement would be worth. He had between nine and ten acres under cultivation. This land was below the Cove ditch. I don't think any of the land, except this nine or ten acres, was below the Cove ditch, or could be irrigated. Of the whole hundred and sixty acres I should judge sixty or seventy acres is plow land. I don't think at that time that any one could make a living on the place. If Mr. Cannon had broken it that summer I do not think he could have raised a crop that year. In 1909 or 1910 there was not very much dry land farming in that vicinity—they didn't think very much of it. It has only been the last four or five years that it has been practiced to any great extent. I saw Mr. Cannon on his place from the spring he filed on it up until he proved up. Sometimes I would see him there every week and sometimes every day. He would be there in the evening, sometimes in the morning. When I would leave he would stay there, and in the night, when I left, I left him there. He had in the cabin two stoves, bed and bedding, trunk, chairs, table and cooking utensils. He

had a cook stove and a heater both set up. I never ate any meals there. I was never there at meal times. I saw him there after he made final proof. After he made final proof he continued to live there about a year. After he left there I think he went to Washington. Mr. Cannon was engaged in breaking and training harness horses for different parties. I don't know what arrangement he had with Mr. Storey for the use of the barn and the feeding of these horses. I don't know the names of any of the parties whose horses he did train during that time. Between May 1, 1909, and January 24, 1911, I was in the trotting barn on the Storey place while Mr. ~~Cannon~~ ^{Cannon} was there. There was a harness room in that barn, but no bed room. There was no cot or bed in the harness room. The harness room was used for hanging harness in and for blankets for the horses. I saw a chest in there, which was used for horse blankets. I do not remember of Mr. Storey being absent from the place from May 1, 1909, up to January 24, 1911.

Cross Examination.

(By MR. WHEELER.)

My business is farming. I am farming my own place. From May, 1909, until January 24, 1911, I worked part of the time for myself and part of the time for different ones. Part of the time I worked for Mr. Storey—worked for him through the summer. I ate part of my meals at Mr. Storey's during the summer of 1909, and Mr. Cannon ate some of his meals there. That is my signature. I was down at the Can-

non place during the day time on some occasions, and I saw Mr. Cannon there during the day time quite frequently. During the summer of 1910 I saw him there in the day time. I think I saw him there during the month of July and August of 1910. Sometimes I would see him there in the evening and sometimes in the middle of the day. I saw him there frequently in the summer of 1910 during the middle of the day. I saw him there in the morning at various times, but not many. I saw him there in the morning the summer he filed, after he made his filing in 1909. I would see him there about eight or nine o'clock in the morning, and I saw him there a great many times at that time, and I saw him there a good many times in the evening. The windows had glass in them. It is not a fact that the boards were nailed across the windows, on the outside. In putting in the floor new boards were used. I saw them in the year 1909. It is not a fact that the horses were in the cabin for shelter and broke through the floor in 1910. It was not an old mattress in the cabin that had been there for years. I have not talked with anyone about this case. I have not talked to a soul—haven't discussed the case with anyone until I came on the witness stand. The only thing Mr. Cannon asked me was if I remembered what I said at the final proof. I was not in the court room last night when he was testifying, and did not talk to him about it at all. I said that there were about nine or ten acres under cultivation.

Q. At the time you testified before the land office

you said there was something like fifteen—about fifteen acres—of the entire tract under cultivation, "Q. The claimant has about fifteen acres of the entire tract under cultivation and he has raised a crop two seasons," is that the statement you made at that time?

A. About that. I don't know exactly the number of acres. When I helped fix up the cabin I was working for Mr. Cannon. I helped harvest some of the crops—I was then working for Mr. Storey. It was Mr. Storey who cultivated this land, and Mr. Storey harvested a part of the crop. Mr. Cannon harvested a part; he harvested the potato crop. I don't know what he did with it. I didn't help him harvest the potato crop. I harvested the corn crop,—small corn—and it was taken up to Mr. Storey's place. I said that I thought the improvements all together were worth thousand dollars. That did not include the barn, as it was built after he made final proof. There was some people that drove across the land some of the time Mr. Cannon was there. There was a gate way close to the house consisting of four wires that was closed, and there was a similar gate down at the other end. This road across there was a cut-off or a shorter way to get to Park City. I was in the cabin and saw the bed there. I was at Storey's place through the summer most of the day, and had part of my meals there —my dinner and supper—taking my breakfast at home. Part of the time Mr. Cannon had his meals there at the same table with Mr. Storey and myself, but not all the time, and Mr. Cannon was there during the

summer of 1910 at different times during the day time in the afternoon and in the afternoon and around nine and ten o'clock in the morning I saw Mr. Cannon on his place. I saw him there on frequent occasions during the summers of 1910 and 1909.

Re-Direct Examination.

(By MR. JOHNSTON.)

I would see him on his place in the mornings and evenings and sometimes through the day. I would see him there when I would go through after wood at different times through the year, summer, fall and winter. I would make trips after wood once or twice a month, but I have seen Mr. Cannon oftener than that. When I would see him there in the day he would be working around at different things. I have seen him driving his horses about the ranch—off his ranch and to Mr. Storey. I mean, drive from Storey to his place and back. I talked to your partner, Mr. Coleman, about this case. In 1909 and 1910 there was not very many people living near where Mr. Cannon lived, and there would not be very many people going by his place on the way to Park City.

Re-Cross Examination.

(By MR. WHEELER.)

I saw him working around the place on various occasions when I was there. We would be fixing the corrals, first one thing and then another. He didn't have any garden. The old barn was fit to keep horses in, but I don't know that I ever saw a horse in it. I didn't put up the gate I spoke about, and it was not

put up at the time the barn was put up, but before that.

CHESTER A. ROBERTS, being first duly sworn as a witness for and on behalf of the defendant, testified as follows:

Direct Examination.

(By MR. JOHNSTON.)

I am a son-of-law of Walter D. Storey and was his son-in-law in 1910. I am acquainted with Mr. Cannon and have known him about eight years. I know when he filed on his homestead in 1909. I was on his place some, he was on there when I went across. I knew he was there in the summer of 1909. I helped him move the stove and cooking utensils to that place. In the way of a bed he had a bedstead, spring mattress and bedding. I helped him take them out of the stable—the barn he had down at Mr. Storey. The stove he got at the same place. He had three stoves, a heating stove, cook stove and gasoline stove. He had a home made board table and a chair, and some cooking utensils. He got all of these from a stall in the barn at Mr. Storey's where he had them stored. That was the barn they call the trotting barn. I helped Mr. Cannon move them up to his homestead. No one else helped. I also took a trunk up but did not examine to see what was in it. This was not very long after he made his filing, but I don't know just how long after. That spring I saw two men throwing dirt

on and fixing the roof of his house—they were Mr. Cannon and Mr. Buster. When we moved the stuff in, the cabin had a new floor, not all new, it had been fixed up, but I don't know just when that was done. The cabin had two windows with window lights in them, and with board shutters hanging on hinges. I don't know just when the windows were put in and the shutters were put on. I have seen lots of homesteaders' cabins vicinity, or in that part of the state. Mr. Cannon's cabin was a good cabin—good as the average. He had the place fenced, not around it, but he had everything fenced except where the rim rock served as a fence. Stock could not get out or get in. He had a corral and a log stable. The stable and corral were on the place when he filed, but he built the fence himself. I don't think there was any fence there at all when he filed, but I could not say positively as to that. I went by the place several times between May 1, 1909, and January 24, 1911. I saw Mr. Cannon there during that time in the day time and once in a while at night, if I would be late getting from town. When I would see him in the day he was generally working with the horses, either using them or taking them out of the harness. I would see him driving at different places—sometimes on the road, sometimes he would be in Park City and sometimes on his place with the horses, and sometimes at Storey's place. I know he had some of Mr. Storey's horses and Mr. Deverill's and I guess he had some outside horses. I know he had some horses that didn't belong to Mr.

Storey, but I don't know whose they were. I don't know what the arrangement was between him and Mr. Storey in regard to the barn and the feeding of these horses. I never was in the cabin in the evening. I don't know ~~where~~ Mr. Cannon slept and I could not say he slept there, but I always supposed he did—that is where his home was and I seen him up there in the evening. He had a bed with mattress to sleep on. I do not know of his having a home any where else during that time. There was a harness room in the barn on Mr. Storey's place, but no sleeping or bed room. That room was used to keep driving harness in. I do not know of any bed or cot in that room. I have seen a chest in there—it was a harness chest—I think that is what they call it. I never knew that Mr. Cannon kept any of his personal effects or clothing in that harness room. I was in that room frequently during those two years. During those two years I know that he ate at Mr. Storey's some time. I don't know whether he always ate at Mr. Storey's during those two years, as I wasn't there. He did not always eat there when I was there. I ate meals there when he wasn't present. I don't know anything about his being absent any of the two years he had this homestead. He might have gone but not that I knew anything about. He was not absent to my knowledge. I was living about four miles from this cabin; it was between my home and Park City. In going to Park City sometimes I would go by this place. The country was not well settled at that time, and there

was not much dry land farming in that vicinity at that time. At the time final proof was made I should judge there was about nine acres of this land—something like that—under cultivation, and probably sixty or seventy acres more that could be cultivated. None of this sixty or seventy acres could be irrigated. Whether or not if any of the sixty or seventy acres were cultivated in 1909 after Mr. Cannon went there, any crop could have been raised, that year, I cannot say. At that time the people did not go very strong on dry land farming and it was awful dry those years. I don't think there could have been much raised. In 1909 and 1910 there was a little dry land crop on the creek, but it didn't amount to anything. I believe it was a little dry in 1910. I was a witness for Mr. Cannon on his final proof. I never measured the nine acres in cultivation.

Cross Examination.

(By MR. WHEELER.)

I testified at final proof that the total value of the improvements was one thousand dollars—that is what I would place them at. At the time Mr. Cannon went on the place the corral, stable and house was there but I didn't know there was any fence there. The cultivation that was done there was done by father-in-law, Mr. Storey, and the crops were harvested by him. Mr. Buster, the witness who has just testified, worked there for my father-in-law during the year 1909, and part of the year 1910, worked most of the year 1909. While he was working there harvesting these crops I sup-

posed he was working for my father-in-law. I said that I helped move this bed and stuff down there. The floor that was in the building was not a new floor. There was a little in the corner—across the corner—that was the old floor. There was just about half of it—that much anyway,—that was new floor—new boards. I was in the cabin in 1910. It is a fact that in 1910 the floor was broken through in several places. I cannot say how long it remained in that condition, but it wasn't very long. I didn't assist in putting in the floor. I saw Mr. Cannon on his place in the day time 1909 and 1910, but I wasn't there very often. I would go through the place there and see him. During the months of July and August, 1910, I saw him on there in the day time. I don't know that in the months of July and August, 1910, he wasn't in that vicinity. I don't know whether or not during that period of time he was in Bozeman fifty-eight days. I was around the Storey place during 1910. I don't know that Mr. Cannon wasn't there something like two months of that summer—I didn't know that he was gone. I never kept any track of it—supposed he was there. I never had anything to do with Mr. Cannon. I swore before the land office that to my knowledge he was not absent during the fourteen months immediately preceding the time of final proof. He was there for all I knew—I supposed he was there. That is my signature.

Q. The question asked of you was "Q. Have claimant's family ever been absent from the homestead

since thus establishing residence thereon. A. No;" I said "Not that I know of." I read this over and I said, "Not that I know of," and they put it "No."

Q. "If there has been any such absence, give the dates covered by such absence, state who was absent and for what reason. A. No absence." A. That I know of, I added that. I read this over and spoke about it to the lady that took it down—I don't know what her name was—and she says, "That is right, that is the way we always fill them out," and I supposed that is all there was to it.

Q. In answer to question No. 8 here, you were asked, "Q. Are there any indications of coal or other minerals on the land, if so describe them," and your answer was, "A. Not that I know of." On that occasion they didn't merely put down, "No," but what your answer really was, was that right? A. That is the way I answered it. I didn't pass by this house a great many times, but I passed through there, would probably go through once a week, average that much anyway. In 1909 and 1910 there was a gate by the house so that you would have to get out and unhook it. He built the fence in 1909 and the fence—passing right in the same place, and the fence is right down there yet, and there was a gate there, up until last year there was. There was a gate there before Mr. Cannon built the new barn, but I don't know just when the gate was put there. I think Mr. Cannon built the barn in 1911, but I cannot say positively about that. At the time he made his final proof and I testi-

fied that the improvements was worth one thousand dollars, I did not take into consideration this new barn, but I did take into consideration the log stable that was there. That stable was there when he took the place up—but he fixed it up some. The stable was in such a condition that you could keep a horse in it in 1909 and 1910. I never examined it but I seen it.

Re-Direct Examination.

(By MR. JOHNSTON.)

At the time this floor was broken for a short time in 1910 this furniture was still in the house. When I was there at that time no one was with me. Mr. Cannon was working—might have been driving horses, I don't know where he was. When I saw the floor broken Mr. Cannon was not at the cabin with me. I don't remember whether or not I saw him in the cabin shortly before or shortly after that time. I saw him there after he made final proof. I don't know how long he remained there, but he was there around the place about a year I think.

W. D. STOREY, being first duly sworn as a witness for and on behalf of the defendants, testified as follows:

Direct Examination.

(By MR. JOHNSTON.)

I am one of the defendants. Have known Mr. Cannon about fifteen years. He worked for me before he made this filing. He began working for me I think

in 1902, and worked about three years. He then went away and I think stayed about two years. When he worked for me from 1902 to 1905, he was breaking colts. When he came back in 1907 he was handling horses and broke some colts for me also. When he came back in 1907 he brought some horses from Big Timber. From 1907 on he was there under this arrangement. He paid me five dollars per month for each stall for each horse he had there. I furnished the feed and he fed the horses. The five dollars per month covered stable room and feed for each horse. That arrangement continued all the time he had horses there, up until the time he left about April, 1912. During that time he did not train any horses for me, but he did break some horses for me. When he was breaking for me, I paid him a dollar a day for each horse he handled for me, but of course I don't know what other men paid him. From May 1, 1909, until January 24, 1911, the only place I knew of Mr. Cannon boarding was at my place. He did not eat there all the time, but all the meals I knew of he took at my place. I don't know where he ate when he wasn't eating at my place. The arrangement between us with regard to his eating at my place was that he was to pay for his board and he paid his board. It was paid to me on our settlement, but I cannot fix the date of our settlements. We generally settled up once a year, or may be once in six months. I don't know where Mr. Cannon slept from May 1, 1909, up to January 24, 1911. He was not sleeping on my place or at my place. He did not have a

bed room in this trotting barn. There is a room in that barn I fixed up for hanging harness in. During the time between May 1, 1909, and the final proof January 24, 1911, I think there was a bedstead in there, if I remember right. I do not know of anyone using that bed or bedstead during that period of time. If Mr. Cannon had been sleeping on my premises or in that barn during that time I think I would have known it. So far as I know, I don't know of any one sleeping there. I know there was a man sleeping in that barn at one time. I don't remember the year, but it was Frank Cannon, a brother of Harry Cannon. I never knew of Harry Cannon sleeping in that room. I had a bunk house there on the place with plenty of room for men to sleep. Harry Cannon slept in that bunk house when he first commenced working for me in 1902, but he did not sleep there to my knowledge during the time he had this homestead. I was on his homestead in the day time between the time of his filing and the final proof, but I don't remember that I ever saw him there. I was not there in the night time at all. I don't remember that I ever saw him when he was going to or coming from it, but I have seen him quite frequently on the road between my place and his homestead. At the time he made his filing there was a cabin, a log stable, a corral and some fencing on the place. I don't know just how much fencing there was, but there was a wire fence around there. I afterwards saw that the old fence was fixed up, but I don't know who did it. I don't remember now

whether or not there was any additional fence put while Cannon was there. I don't know whether or not Cannon made repairs on the house or the log stable while he was there. I was in the cabin before he made his filing, but was not in the cabin after the time he made his filing and before he left. From the time he made his filing up until I bought the place, I had never been in the cabin, and I know nothing about the kind of furniture he had there, if any. I farmed eight or nine acres of this land in 1909-1910. That land lies right below and was irrigated from what we call the Cove Creek. I had an agreement with Mr. Cannon that I was to have all I could raise for plowing and cultivating it—I got the crop. I think about fifty acres of that quarter that could be cultivated, but that is all above the ditch and could not be irrigated. I have lived down in that vicinity since 1890. In 1909 and 1910 there was no dry land farming at all in that vicinity. It was not thought crops could be successfully raised on a dry land farm at that time. I remember some people tried to dry land farm in 1909 and they made a complete failure of it—they did not raise anything. They did not try again in 1910. I had water with which to irrigate this small tract that I cultivated. I was familiar with the value of land of this character in that vicinity in 1909, 1910 and 1911. In the year 1911 and 1912 about the time I bought this land from Mr. Cannon. Land of this character was worth about two or two and a half an acre. That would be raw land without improvement—sold merely

as grazing land. This same kind of land had been sold a few years before by the railroad and about three years ago I bought a section right adjoining this on the north for two dollars and eight-nine cents per acre. I bought that land from the Northern Pacific Railway, and it was about the character of land as this land. This eight or nine acres lying below the Cove ditch is good land and is worth now perhaps a hundred dollars per acre with a water right. A water right in the Cove Ditch cost me thirty dollars per share. I got five-eights inches and that is not enough for an acre—I figure an inch to the acre. The old timers an inch to the acres and the new men Bud O'Donnell half an inch, but you cannot irrigate under an inch. That eight or nine acres is worth more than all of the rest of the place together. At the time Mr. Cannon made his filing I had no agreement of any kind with him about buying the place, and I did not have any agreement with him during the period intervening and up to the time he made the final proof. The negotiations I had with him looking towards the purchase of this land was about the first of April, 1912, when Cannon wanted to sell me the place. I know why he wanted to sell. He showed me a letter he got from a party in Washington and the letter went on and read about this way, he says, "Harry, there is a good layout for you"—the letter wanted him to come there and take charge of a fair ground. I paid him one thousand dollars for the place and gave him my note for one thousand dollars due on demand. I paid that note

about May 15, 1912, through the Park City State Bank, paying the full amount of the note, plus interest. I do not know where the note is now. I make a practice of keeping my notes when I pay them, and kept this one around the house for two years, and supposed I had at this time, but I could not dig it up any place. I know the witness Imhoff who testified here. He sheared sheep for me at one time, but quit working for me in the spring of 1910 on the 15th day of April. I supposed we were lambing about that time. It takes about four weeks to lamb a band of six hundred ewes as a rule. He commenced working for me on the 28th day of October and worked until, until the 15th day of April, 1909, and then he was out of my employment until September, 1910. I do not know where he was employed and perhaps he was in that vicinity. I might have seen him and I might not. He was not herding sheep on the adjoining homestead, the adjoining homestead claim of Cannon. I did not furnish Cannon any of the money for filing on this land or any of the money for making any of the improvements, or for making commutation proof. There was a frame barn or stable on the land when I bought it, but I don't know when it was built. I took that barn down in May or June, 1912, along in the summer some time, and moved it to another place of mine, but that was after I purchased this place. I did not have any knowledge during all the time intervened between May 1, 1909, and January 24, 1911, that Mr. Cannon was making his home any where else excepting on his homestead. I

didn't not have any interest in the claim, or in the land he filed on during that time. I had no interest only in that little piece I farmed down there—I put in the crop. I have seen lots of homesteaders' cabins in this country during the years I have lived here. This cabin of Mr. Cannon compared very favorably with these homesteaders' cabins. So far as I know his residence on that land was as continuous as the residence of the ordinary homesteader on his homestead.

Cross Examination.

(By MR. WHEELER.)

I know that Mr. Cannon was away in Bozeman during the year 1910, but I cannot recall to mind now that he was away during the summer of 1909, although he might have been. Perhaps he did go to Bozeman in the summer of 1909 with some horses. I would not be positive he went away in 1909 or in 1910, but I know he was away some of the time a while. He had some of my horses in 1909 or 1910 at the ranch, but I don't think he took any of them to Bozeman. During 1909 and 1910 all the meals I ever saw him eat was at my place. I saw him there very frequently, morning, noon and night. Perhaps I am familiar with the race horse game, but not an old sport. No I will not say I ever owned a race horse, but I thought I did.

Q. Was he training race horses at the time he was up there at your place? A. That is a question I cannot answer. I don't think he ever trained a race horse. I don't know whether he ever trained many he thought were race horses—I cannot tell what he thought. He

trained them at the race track and took the same care of them as a man ordinarily takes of a race horse. I have heard of men training race horses, leaving the horses and not sleeping in the same barn with them, and of men training race horses and leaving them and not having anybody in the barn with them at all. When I built the harness in the barn and put the bedstead in there, I put it there for that very purpose of having somebody staying in the barn with the horses. When I put up that bed in the barn I did not put a mattress on it, and fix it up for a regular bed in that harness room. I don't think it had a mattress on it in 1909 or 1910, but there might have been for short period. I don't remember the year that Frank Cannon came out there. There was a bedstead in that room and I took some bedding from the bunk house and put it in there so he could sleep there. The bed was there in 1909 and 1910. Mr. Cannon did not have any trunk there to my knowledge. What clothes he would be wearing he might have there, kept his overalls and jumpers hanging up there. I don't think his trunk was there, but there was a boot trunk or horse chest there. I didn't notice any trunk besides that, and I don't think there was any there. I know Andrew Murray, but he never worked for me and was not a partner of mine. He occupied the Cannon land before I filed on it. I don't remember the date I filed on that land, but was about five years before I relinquished it.

Q. In other words, you held the land under this

homestead application for a period of five years and you relinquished it at nine forty in the morning and Mr. Cannon filed on it at nine forty-five? A. I cannot tell what time he filed on it. I was not present in the land office when he filed. I told him I was going to relinquish. I don't know who built the cabin on this land, but it was built there prior to the time I filed my application. At the time I filed my application I did not have six hundred and forty acres, I did not own any land, and I did not have any contract with the Northern Pacific Railway Company. I entered into the contract with the Northern Pacific Railway Company about two years ago. This property that I had at that time was in my wife's name, but this contract with the railroad company was not. The fencing on this land was not built by me and I do not know who built it. The fencing, cabin, corral and old log barn were there when I filed. I would not cross this land going to Park City, as my place was south of there, nearer to Park City, but I have crossed this land. This land joins my ranch. At the present time I own section 25 and section 24. I never was down at the cabin while Mr. Cannon had the land.

Re-Direct Examination.

(By MR. JOHNSTON.)

Q. Did you ever see Mr. Cannon at your place from May 1, 1909, to January 24, 1911, when he did not eat his meals at your place during the time he had this homestead filing. Was he ever there with his horses when he did not eat his breakfast, dinner and supper

at your place? A. During meal hours? Q. Yes. A. No I don't remember he was ever there at meal hours when he was— Certainly he was there some time during the day when he didn't eat with him. I could not say how much of the time he ate his meals at my place and what portion of the time he ate them somewhere else. I did not live on that homestead after I filed on it. I did go up there and sleep a few times, but I could not say that I made that my home. I tried to talk my wife into going up there and live but she would not go up, and it was pretty lonesome sleeping up there alone, so I quit the homestead.

Re-Cross Examination.

(By MR. WHEELER.)

During 1909 and 1910 when Mr. Cannon was at my place he ate there. I think that when he was working there, when he had his horses at the barn during 1909 and 1910, that he ate more frequently at my place than he did any place else. That is my belief. As a matter of fact I expect he ate nearly all of his meals at my place when he was training the horses at my barn during 1909 and 1910.

Re-Direct Examination.

(By MR. JOHNSTON.)

During that time it was my belief that Mr. Cannon was sleeping on his homestead.

That the foregoing is a narrative of all of the testimony introduced and given on the trial of said action.

WHEREFORE complainant prays that the above and foregoing narrative of the testimony taken on the trial of said cause, be settled, approved and allowed by the above entitled court as a true, full and correct and complete statement of all of the evidence taken and given on the trial of said cause, for use on the appeal taken to the United States Circuit Court of Appeals for the Ninth Circuit.

B. K. WHEELER,
United States Attorney,
Solicitor for Complainant.

Service of the foregoing proposed statement of the evidence and a receipt of a copy thereof this 17th day of June, 1916, is hereby admitted and acknowledged.

C. J. HARRIS,
W. M. JOHNSTON,
H. J. COLEMAN,
Solicitor for Defendants.

CERTIFICATE.

I, the undersigned, Judge of the District Court of the United States for the District of Montana, hereby certify that the foregoing statement of evidence is a true, complete and properly prepared narrative of all of the evidence adduced on the trial of the above entitled action, and I do further certify that the same has been duly served and filed as required by the rules of the court.

Dated this 10th day of July, 1916.

BOURQUIN,

Judge.

(Indorsed) Title of Court and Cause. Statement of Evidence on Appeal. Filed July 10th, 1916, Geo. W. Sproule, Clerk, by C. R. Farlow, Deputy.

That on June 16th, 1916, Petition for Appeal and Order allowing the same was duly filed and entered herein in the words and figures following, to-wit:—

IN EQUITY—No. 53.

In the District Court of the United States, District of Montana.

UNITED STATES OF AMERICA,

Complainant,

vs.

HARRY CANNON and WALTER D.
STOREY,

Defendants.

PETITION FOR AND ORDER ALLOWING APPEAL.

The above named complainant, the United States of America, conceiving itself to be aggrieved by the decree entered herein on the 26th day of January, 1916, in the above entitled proceedings, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons speci-

fied in the assignment of errors which is filed herewith, and prays that an appeal be allowed and that a citation issue as provided by law, and that a transcript of the records and proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

B. K. WHEELER,
Solicitor for Complainant.

The foregoing petition is hereby granted and an appeal is allowed.

Dated this 16th day of June, 1916.

BOURQUIN,
Judge of said District Court.

(Indorsed) Title of Court and Cause. Petition for and Order allowing Appeal. Filed and Entered June 16, 1916. Geo. W. Sproule, Clerk, By C. R. Garlow, Deputy.

That on June 16, 1916, as Assignment of Errors was duly filed herein in the words and figures following, to-wit:—

In the District Court of the United States, District of Montana.

UNITED STATES OF AMERICA,

Complainant,

vs.

HARRY CANNON and WALTER D.
STOREY,

Defendants.

ASSIGNMENT OF ERRORS.

The complainant in this action, in connection with its petition for an appeal herein, hereby makes the following assignment of errors, which it avers occurred in this cause:

1. The court erred in finding the evidence taken in said cause, on the trial thereof, was insufficient to sustain the allegations of the bill of complaint herein.
2. The court erred in finding the evidence taken in said cause, on the trial thereof, was sufficient to and did sustain the allegations of new matter in defense set forth in the answer herein.
3. The court erred in ordering a decree herein in favor of the defendants and against the complainant.
4. The court erred in entering a decree herein in favor of the defendants and against the complainant.

WHEREFORE, the said complainant, the United States of America, prays that said decree of said District Court of the United States for the District of

Montana, rendered and entered in the above entitled cause, be reversed.

B. K. WHEELER,
United States Attorney,
Solicitor for Complainant.

(Indorsed) Title of Court and Cause. Assignment of Errors. Filed June 16, 1916. George W. Sproule, Clerk, by C. R. Garlow, Deputy.

That on June 16, 1916, a Citation was duly issued herein which is hereunto annexed and is in the words and figures following, to-wit:—

In the District Court of the United States, District of Montana.

UNITED STATES OF AMERICA,

Complainant.

vs.

HARRY CANNON and WALTER D.
STOREY,

Defendants.

CITATION ON APPEAL.

UNITED STATES OF AMERICA—SS.

To HARRY CANNON and WALTER D. STOREY, Defendants and Appellees, and C. L. HARRIS and W. M. JOHNSTON, their Attorneys and Solicitors, GREETING:

You, and each of you, are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, State of California, within thirty days from the date hereof pursuant to an appeal filed in the office of the Clerk of the District Court of the United States, for the District of Montana, wherein the United States of America is appellant and Harry Cannon and Walter D. Storey are appellees, to show cause, if any there be, why the decree in said appeal mentioned should not be corrected and reversed and speedy justice should not be done to the parties on their behalf.

WITNESS, the Honorable GEORGE M. BOURQUIN, Judge of the United States District Court, District of Montana, this 16th day of June, 1916.

BOURQUIN,

Judge of the District Court of the United States,
for the District of Montana.

Service of the within citation and receipt of a copy thereof is hereby admitted this 17th day of June, 1916.

C. L. HARRIS,

H. J. COLEMAN,

W. M. JOHNSTON,

Solicitors for Defendants and Appellees.

(Indorsed) No. 53. United States of America,
Plaintiff vs. Harry Cannon and Walter D. Storey, Defendants. Citation on Appeal. Filed June 20, 1916.
Geo. W. Sproule, Clerk, by C. R. Garlow, Deputy.

That there after on July 10th, 1916, an order extending time to prepare and file record on appeal was entered herein as follows:—

*District Court of the United States, District of
Montana*

UNITED STATES OF AMERICA,

Complainant,

vs.

HARRY CANNON and WALTER D.
STOREY,

Defendants.

**ORDER EXTENDING TIME TO PREPARE RECORD
ON APPEAL.**

Upon good cause shown, it is hereby ordered that complainant and appellant in the above entitled cause, may have thirty days in addition to the time allowed by the rules of the court within which to have prepared and certified up to the Circuit Court of Appeals for the Ninth Circuit the record on appeal herein.

Dated this 10th day of July, 1915.

BOURQUIN,

Judge.

(Indorsed) Title of Court and Cause. Order extending time to prepare record on appeal. Entered July 10th, 1916, Geo. W. Sproule, Clerk, By C. R. Garlow, Deputy.

Thereafter on July 11th, 1916, appellant duly served and filed herein its praecipe for a transcript of the record on appeal herein, together with affidavit of service thereof which is in the words and figures following, to-wit:—

*District Court of the United States, District of
Montana.*

UNITED STATES OF AMERICA,
Complainant,
vs.
HARRY CANNON and WALTER D.
STOREY,
Defendants.

PRAECIPE FOR TRANSCRIPT OF RECORD.

To HARRY CANNON and WALTER D. STOREY, Defendants and Appellees, and to H. L. HARRIS, W. M. JOHNSTON and H. J. COLEMAN, their solicitors:

The undersigned, solicitors for the complainant and appellant herein, hereby files and serves upon you, its praecipe, in conformity with the rules of court, indicating the portions of the record in the above entitled cause to be incorporated into the transcript on appeal herein, and which said portions of said record you are hereby notified the said complainant and appellant will incorporate and include in the record on appeal herein:

A.

Judgment Roll, consisting of:

1. Bill of Complaint.
2. The Subpoena.
3. The Answer of the Defendants.
4. The Decree.
5. The Certificate of the Clerk.

B.

The evidence introduced as incorporated in the statement of record on appeal.

C.

A memorandum of the opinion of the Court.

D.

Plaintiff's notice to settle statement of evidence on appeal.

E.

Statement of evidence on appeal prepared in narrative form in pursuance of the rules of court, and certified by the Judge of said court as a correct, true and properly prepared narrative of the evidence.

F.

Petition for Appeal and Order allowing same.

G.

Assignment of Errors accompanying the Appeal and Allowance.

H.

Citation on Appeal and affidavit of service.

I.

Order extending time for preparing and filing record on appeal herein.

J.

Copy of this Praeceipe.

B. K. WHEELER,

United States Attorney, District of Montana, and So-
licitor for Complainant and Appellant.

United States of America,
District of Montana.—ss.

Frank Woody, being first duly sworn according to law, deposes and says: That he is a duly appointed, qualified and acting Assistant United States Attorney for the District of Montana; that C. L. Harris, W. M. Johnston and H. J. Coleman, solicitors for the defendants and appellees, are each and all residents of Yellowstone County, State of Montana, residing at Billings in said county and state; that on the 11th day of July, 1916, affiant served the foregoing praecipe on each and all of said solicitors for the defendants and appellees, by depositing in the United States Post Office, at Helena, in the County of Lewis & Clark, State of Montana, three copies of said praecipe, one thereof directed to each of defendants' and appellees' solicitors at Billings, Montana, with postage fully prepaid on each thereof.

FRANK WOODY.

Subscribed and sworn to before me this 11th day of July, 1916.

GEO. W. SPROULE,

Clerk U. S. District Court, District of Montana.

(Seal)

By C. R. GARLOW,

Deputy.

(Indorsed): Title of Court and Cause. Praeclipe
for Transcript of Record. Filed July 11, 1916, Geo.
W. Sproule, Clerk. By C. R. Garlow, Deputy.

CLERK'S CERTIFICATE TO TRANSCRIPT OF RECORD.

United States of America,
District of Montana.—ss.

I, George W. Sproule, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume, consisting of 107 pages, numbered consecutively from 1 to 107, inclusive, is a true and correct transcript of the pleadings, process, orders, decree, decision, and all other proceedings in said cause required to be incorporated in the record on appeal therein by the praecipe of the appellant for said record on appeal, including said praecipe, and of the whole thereof, as appears from the original records and files of said court in my possession as such clerk; and I do further certify and return that I have annexed to said transcript and included within said pages the original citation issued in said cause.

I further certify that the costs of the transcript of record amount to the sum of Forty-eight & 89/100 dollars and have been made a charge against appellant.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court at Helena, Montana, this 8 day of July, 1916.

Geo. W. Sproule

Clerk United States District Court, District of Montana.

By C. R. Garlow
Deputy Clerk

(Seal)